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# TRANSCRIPT OF RECORD

15

## Supreme Court of the United States

OCTOBER TERM, 1928

No. ~~685~~ 41

NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND, PETITIONERS,

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED JANUARY 5, 1928

CERTIORARI GRANTED FEBRUARY 27, 1928

(33,137)

( )

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1927.

## No.

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NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND, PETITIONERS,

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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## IN CIRCUIT COURT OF DANE COUNTY

Northern Coal & Dock Company, a Corporation, and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Plaintiffs,

vs.

Emma Strand and Industrial Commission of Wisconsin, Defendants

Affidavit of Service of Summons and Complaint—Filed December 3, 1925

State of Wisconsin,
County of Dane, ss:

I, Robert J. Putnam, being first duly sworn, on oath do state that at the request of the plaintiffs, on the 30th day of November, 1925, at the City of Madison in Dane County, Wisconsin, I served the summons and complaint in the above entitled action on the above named defendant, Industrial Commission of Wisconsin, by then and there delivering personally to and leaving personally with A. J. Altmeyer, the secretary of said Commission, a true copy of said summons and complaint, and that at the time of said service, I endorsed upon the copy of said summons and complaint so served, the date upon which the same was served and signed my name thereto.

Robert J. Putnam.

Subscribed and sworn to before me this 30th day of November, 1925. Lawrence E. Hart, Notary Public, Dane County, Wisconsin. (Seal Lawrence E. Hart, Notary Public, Dane County, Wis.)

[File endorsement omitted.]

[fol. 2] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

SUMMONS—Filed December 3, 1925

State of Wisconsin to the said defendants and each of them:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

Powell & Sprowls, Attorneys for Plaintiff. P. O. address: #11 First Nat'l Bank Building, Superior, Wisconsin. Lines, Spooner & Quarles, Milwaukee, Wisconsin, of Counsel.

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[fol. 3] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

COMPLAINT—Filed December 3, 1925

The above plaintiffs by their attorneys, Powell & Sprowls, for cause of action against the above named defendants respectfully show to the court and allege as follows:

1. That at all times hereinafter mentioned, plaintiff, The Northern Coal & Dock Company, was and now is a corporation organized and existing under and by virtue of the laws of the State of Ohio and duly licensed to do business within the State of Wisconsin; that at all times hereinafter mentioned, the plaintiff, General Accident, Fire & Life Assurance Corporation, of Perth, Scotland, was and now is a foreign corporation duly authorized and licensed to do business as in insurance company within the State of Wisconsin, and that as such insurance company, on the 20th day of October, 1924, and for some time prior thereto, insured the plaintiff, Northern Coal & Dock Company, against accidental injuries to its employees growing out of and in-

cidental to their employment under and pursuant to the provisions of Section 102.3 to 102.41, inclusive, of Wisconsin Statutes commonly known as the Workmen's Compensation Act.

2. That at all times hereinafter mentioned, the defendant, Industrial Commission of Wisconsin, was, and now is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin.

[fol. 4] 3. That in a proceeding had before the defendant, Industrial Commission of Wisconsin, wherein Emma Strand was applicant and the Northern Coal & Dock Company was respondent and the General Accident, Fire & Life Assurance Corporation, Ltd., plaintiff above named, was the insurance carrier, the said defendant, Industrial Commission of Wisconsin, on the 14th day of November, 1925, made certain alleged findings of fact and upon such alleged findings of fact, made and entered its order and award in favor of said applicant and defendant, Emma Strand, and against the plaintiffs above named, awarding said Emma Strand the sum of five thousand eight hundred ($5,800) dollars as death benefit and funeral expenses for the death of one Charles Strand, as more fully appears in the alleged findings, order and award, a copy of which is hereto annexed, marked Exhibit "A" and made a part hereof.

4. That these plaintiffs are aggrieved by reason thereof, and bring this action for a review of said findings, order and award upon the following grounds:

(a) That the said Industrial Commission of Wisconsin, had and has, no jurisdiction of the controversy or the claim in question for the reason that the death of said Charles Strand was the result of a maritime tort, that the admiralty and maritime jurisdiction conferred by the Constitution and Laws of the United States upon the District Courts of the United States in such cases is exclusive; that such jurisdiction is retained by the Federal Courts by Article III, Section 2 of the Constitution of the United States and that the making of the said alleged findings of fact and award herein, were in violation of said Article III, Section 2, of the Constitution of the United States.

(b) That the defendant, Industrial Commission of Wisconsin, in making the alleged finding, as follows: "That on the 20th day of October, 1924, Charles Strand and the re- [fol. 5] spondent were both subject to the provisions of Sections 102.03 to 102.35, both inclusive, of the Statutes of Wisconsin," did not act within but acted without and in excess of its powers and contrary to the undisputed evidence in the case.

(c) That the defendant, Industrial Commission of Wisconsin, in making the alleged findings as follows: "The Commission has given its careful consideration to the evidence offered in this matter and to the contention of the respondent, particularly that the said Charles Strand at the time of injury was an employe in interstate commerce and, therefore, that the applicant herein is not entitled to any benefits provided in the Workmen's Compensation Law of Wisconsin. The Commission is satisfied from the record in this matter that the greater part of the work of the now deceased prior to his death, while in respondent's service, was on its dock and not on a boat or boats or on navigable waters, although at the time of his injury and death he was in the hold of a boat, which boat was on navigable water. The Commission feels that the respondent in this matter was engaged in a non-maritime business, and the mere fact that the now deceased met with his death by reason of an injury while on the boat does not deprive the applicant in this matter of the benefits provided by the Workmen's Compensation Law of Wisconsin," did not act within but acted without and in excess of its powers and contrary to the undisputed evidence in the case.

(d) That the defendant, Industrial Commission of Wisconsin, in making the alleged findings, order and award, did not act within but acted without and in excess of its powers in making any order or award whatsoever, granting the applicant compensation under the Workmen's Compensation Act of the State of Wisconsin.

(e) That the defendant, Industrial Commission of Wisconsin, in making its order and award in which applicant, Emma Strand, was awarded the sum of one thousand one [fol. 6] hundred forty-six and 44/100 ($1,146.44) dollars

to be paid within ten days from November 14, 1925, and a further sum of four thousand six hundred fifty-three and 56/100 ($4,653.56) dollars to be paid in monthly payments of seventy-eight and 87/100 ($78.87) dollars, did not act within but acted without and in excess of its powers in that it had no jurisdiction to make said award and said award is not supported by the evidence.

Wherefore, plaintiffs demand judgment that the findings of fact, order and award, complained of, be set aside and for such other or further judgment, order or relief, as the circumstances may warrant.

Powell & Sprowls, Plaintiffs' Attorneys. Lines, Spooner & Quarles, Milwaukee, Wisconsin, of Counsel.

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[fol. 7] EXHIBIT "A" TO COMPLAINT

BEFORE THE INDUSTRIAL COMMISSION OF WISCONSIN

EMMA STRAND, Applicant,

vs.

NORTHERN COAL & DOCK COMPANY, Respondent; GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, Insurance Carrier

Pursuant to notice hearing was had before the Commission in the above matter at Superior, Wisconsin, on October 28, 1925.

Appearances: Applicant in person and by her attorneys, Cadigan & Cadigan, represented by John Cadigan; respondent by its attorneys, Powell & Sprowls, represented by Mr. Sprowls.

Upon the evidence presented the Commission makes the following

Findings of Fact

That on the 20th day of October, 1924, Charles Strand and the respondent were both subject to the provisions of Sections 102.03 to 102.35, both inclusive, of the Statutes of Wisconsin, and the liability of the respondent for compen-

sation under said Sections of the Statutes was insured by the General Accident, Fire & Life Assurance Corporation; that on said day the said Charles Strand, while in the employ of the respondent and performing service growing out of and incidental to his employment, earned an average annual wage of $1,400.00, or in excess thereof; that Charles Strand sustained personal injury resulting in his death on said day; that the applicant herein is the widow of the said Charles Strand, and was his wife and was living with him as such at the time of his injury and at the time of his [fol. 8] death; that the respondent was given immediate actual notice of said injury and death within thirty days, as provided by Section 102.12 of the Statutes; that the applicant herein necessarily incurred reasonable expense incidental to the burial of the said Charles Strand in a sum in excess of $200.00, for which she is entitled to reimbursement from the respondent.

The Commission has given its careful consideration to the evidence offered in this matter and to the contention of the respondent, particularly that the said Charles Strand at the time of injury was an employe in interstate commerce and, therefore, that the applicant herein is not entitled to any benefits provided in the Workmen's Compensation Law of Wisconsin. The Commission is satisfied from the record in this matter that the greater part of the work of the now deceased prior to his death, while in respondent's service, was on its dock and not on a boat or boats or on navigable waters, although at the time of his injury and death he was in the hold of a boat, which boat was on navigable water. The Commission feels that the respondent in this matter was engaged in a non-maritime business, and the mere fact that the now deceased met with his death by reason of an injury while on the boat does not deprive the applicant in this matter of the benefits provided by the Workmen's Compensation Law of Wisconsin.

Now, therefore, upon the facts so found the Commission makes the following

## Award

That within ten days from the date hereof the respondent, Northern Coal & Dock Company, and its insurance carrier, General Accident, Fire & Life Assurance Corporation,

shall pay to the applicant, Emma Strand, the sum of $1,146.44, the same being the death benefit to which the applicant herein is entitled which has already accrued, and being inclusive also of the sum of $200.00 burial expense incidental to the burial of the husband of the applicant.

[fol. 9] And further, that on the 20th day of November, 1925, and on the 20th day of each succeeding month thereafter, or until there shall have been paid to the applicant in monthly installments the sum of not less than $4,653.56, the said respondent, Northern Coal & Dock Company, and its insurance carrier, General Accident, Fire and Life Assurance Corporation, shall pay to the applicant, Emma Strand, the sum of $78.87.

Given under our hands at the City of Madison, Wisconsin, this 14th day of November, A. D. 1925.

Industrial Commission of Wisconsin, by F. M. Wilcox, R. G. Knutson, L. A. Tarrell, Commissioners.

[fol. 10] Service of the within summons & Complaint at Superior, Wisconsin, Nov. 27th, 1925, admitted.

Cadigan & Cadigan, Attorneys for Defendant, Emma Strand. Powell & Sprowls, Attorneys for Plaintiffs, Superior, Wisconsin.

[File endorsement omitted.]

---

[fol. 11] In Circuit Court of Dane County

[Title omitted]

Separate Answer of Emma Strand—Filed December 2, 1925

Now comes the above named defendant, Emma Strand, by and through her attorneys, Cadigan & Cadigan, and for her separate answer to the complaint of the plaintiffs herein, admits, denies and alleges as follows, to-wit:

1. Admits the allegations contained in paragraphs one, two and three of the plaintiffs' complaint.

2. Admits that the defendant Emma Strand was awarded the sum of Eleven Hundred Forty Six and 44/100 Dollars

($1,146.44), and a further sum of Forty Six Hundred Fifty Three and 56/100 Dollars ($4,653.56), to be paid in monthly installments at the rate of Seventy Eight and 87/100 Dollars ($78.87) per month, by the Industrial Commission as alleged in paragraph four of the plaintiffs' complaint.

3. This defendant denies that in making memorandum of findings and award referred to in said complaint, the said Commission acted without or in excess of its powers in any particular or particulars as alleged in the said complaint, and further denies that the said Commission had no jurisdiction of the controversy or claim in question by reason of the matters and things set forth in the said complaint, and further denies that any of the findings of the said industrial Commission and the award based thereon were contrary to the evidence produced at the hearing before the said Industrial Commission, and further denies that the award and findings are not supported by the evidence as alleged in the said complaint.

Wherefore this defendant demands judgment that the plaintiffs' complaint be dismissed, together with the defendant's costs and disbursements herein, and that the order and award complained of be confirmed.

Cadigan & Cadigan, Attorneys for Defendant Emma Strand, Suite 23, Wisconsin Building, Superior, Douglas County, Wisconsin.

[fol. 12] Due and personal service of the within separate answer of Emma Strand admitted this 30th day of November, 1925.

Powell & Sprowls, Attorneys for Plaintiff. Cadigan & Cadigan, Suite 23, Wisconsin Building, Superior, Wis., Attorneys for Emma Strand.

[File endorsement omitted.]

[fol. 13] [File endorsement omitted]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

SEPARATE ANSWER OF DEFENDANT INDUSTRIAL COMMISSION OF WISCONSIN—Filed in Supreme Court October 20, 1926

The above named defendant, Industrial Commission of Wisconsin, by Herman L. Ekern, Attorney General, and Mortimer Levitan, Assistant Attorney General, its attorneys, for its separate answer to the complaint herein respectfully shows:

This defendant denies that in making its findings, order and award referred to in said complaint it acted without or in excess of its powers in any particular or particulars alleged in said complaint; denies that it had no jurisdiction over the controversy or claim in question; denies that the death of the said Charles Strand was the result of a maritime tort; denies that the making of the findings of fact and award herein was in violation of Article III, Section 2 of the Constitution of the United States; denies that it acted without or in excess of its powers in making the following finding:

"That on the 20th day of October, 1924, Charles Strand and the respondent were both subject to the provisions of Sections 102.02 to 102.35, both inclusive, of the Statutes of Wisconsin."

and denies that such finding is not supported by the evidence; denies that it acted without or in excess of its powers in making the following findings:

"The Commission has given its careful consideration to the evidence offered in this matter and to the contention of the respondent, particularly that the said Charles Strand at the time of injury was an employe in interstate com- [fols. 14 & 15] merce and, therefore, that the applicant herein is not entitled to any benefits provided in the Workmen's Compensation Law of Wisconsin. The Commission is satisfied from the record in this matter that the greater part of

the work of the now deceased prior to his death, while in respondent's serv-ce, was on its dock and not on a boat or boats or on navigable waters, although at the time of his injury and death he was in the hold of a boat, which boat was on navigable water. The Commission feels that the respondent in this matter was engaged in a non-maritime business, and the mere fact that the now deceased met with his death by reason of any injury while on the boat does not deprive the applicant in this matter of the benefits provided by the Workmen's Compensation Law of Wisconsin," and denies that such findings are not supported by the evidence; denies that the award herein is not supported by the evidence.

Wherefore this defendant demands judgment that the findings, order and award complained of be confirmed.

Herman L. Ekern, Attorney General, Mortimer Levitan, Assistant Attorney General Attorneys for Defendant Industrial Commission of Wisconsin.

[fols. 16 & 17] Service of separate answer of defendant Industrial Commission of Wisconsin in the above matter admitted this 15th day of December, 1925.

Powell & Sprowls, Attorneys for Plaintiffs.

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[fol. 18] Secretary's certificate to annexed papers omitted in printing.

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[fol. 19] Form A-12

Employer's No. (Do not fill in) —. Accident No. (Do not fill in) —

S 47.

Industrial Commission—First Report of Accident or Industrial Disease

(1) Date of report: October 21st, 1924. Made out by C. E. Kielley. Position: Sup't.

1—Employer

(2) Employer's name: (Individual or firm name): The Northern Coal & Dock Company.

(3) Office address: (Street, No.) Connor's Point, (City or town) Superior, Wisconsin.

(4) Nature of business (Goods produced, work done or kind of trade or transportation): Receiving and shipping of coal.

(5) Insured under compensation act in General Accident, Fire & Life Assn. Corp.

(6) Where did accident or exposure occur (if not at office address): (Street, No.) Connor's Point, (City or town) Superior.

2—Injured

(7) Name: Chas. Strand.

(8) Address: (Street, No.) 1024 Grand Avenue, (City or town) Superior, Wis.

(9) Age: (Give date of birth, if injured is under 18) 60. (10) Sex: Male. (11) Permit on file (if injured was minor under 17): Yes or No) ——.

(12) Speak English? (Yes or no) Yes. (13) In what department or branch of work employed? (If insured, state classification to which payroll is charged) Operating.

(14) Occupation: (Kind of work done) Handy man and laborer. (15) Length of experience with this employer: 11 years. (16) Wages per week, (Including bonuses, etc): $30.24. (17) Hours per day: 8. Days per week: 6.

3—Time of Accident

(18) Date of accident or first illness: (Month, day, year): October 20, 1924. Last day worked: (Month, day, year): October 20, 1924.

4—Cause of Accident or Disease

(19) Machine, tool or thing in connection with which accident or disease occurred: (If machine, indicate part): Claim shell on unloading tower. (20) Was machine or part guarded? (Yes or No): ——.

(21) Was guard properly attached at time of accident? ——. (22) If not, who removed it? ——.

(23) In cases of industrial diseases underline hazard to which exposed. 1. Dust, gas, fumes. 2. Dirt. 3. Darkness. 4. Dampness or heat. 5. Bad air. 6. Fatigue or inactivity. 7. Poisons. 8. Infections.

(24) In cases of industrial diseases describe method for control of hazards noted above ——.

(25) Describe in full how accident occurred, or how employee was exposed to hazard: (Immediate cause of injury or disease): While working in hold of Str. Mathew Andrews by being squeezed in between clean-up claim of No. 2 towner and outside tank of boat. Was also struck in face by shovel he was working with.

(26) What other conditions helped to cause accident or disease: (Poor light, rough or slippery floors, overcrowding, defective machinery, etc.): ——. (Home conditions, personal hygiene, etc.)

Received Oct. 22, 1924. Industrial Commission.

5—Nature and Extent of Injury

(27) Nature of injury or disease: (State exactly the part of the person affected and the character of injury or disease.) (If amputation, give exact point): Killed instantly, servere laceration and fracture of the nose, chest crushed and right arm broken.

(28) Did accident or disease result in death? (Yes or No): Yes. (29) Probable duration of injury or illness.

(30) Attending physicians: (Name) Dr. V. E. Ekblad, Columbia Bldg., (Address) Superior, Wis.

(31) Dependents (give names of dependents in fatal cases only). Write this information on other side of this sheet according to following form: (Name.) (Relationship.) (Age.) (Address.)

[fol. 20] Received Aug. 11, 1925. Industrial Commission.

INDUSTRIAL COMMISSION OF WISCONSIN

Workmen's Compensation Act.

EMMA STRAND, Special Administratrix of the Estate of Charles Strand, Deceased, Applicant,

vs.

NORTHERN COAL & DOCK COMPANY, Employer

APPLICATION FOR ADJUSTMENT OF CLAIM

The petition of the above named applicant respectfully shows:

1. Address of applicant: c/o Cadigan & Cadigan, Suite 23, Wisconsin Bldg., Superior, Wisconsin.

2. Address of employer: Superior, Wisconsin.

3. Accident occurred at Superior, Wisconsin, on the 20th day of October, 1924.

4. Nature of Injury: Deceased, who was regularly employed as a crane operator on a coal dock owned and operated by the respondent company was transferred on the morning of the day in question from his regular work on the dock of the company to the hold of the Steamer Matthew Andrews, which was tied up to the dock of respondent company for the purpose of discharging a cargo of coal; while in the hold of the said boat and while engaged in shoveling the remants of the cargo together for convenience in unloading by means of a clam shell, the clam shell was dropped upon deceased without warning and he was instantly killed.

5. Deceased was earning sixty three cents per hour and averaged annually the sum of Fifteen Hundred Dollars ($1,500.00).

6. Deceased was sixty years of age when killed.

7. Disability for which compensation is claimed; Death benefit.

8. Notice of injury given on date of death in the following manner: Actual notice was given C. E. Kielley, Superintendent of respondent company, who was at the scene of the accident shortly after the same occurred.

9. Burial expenses, Two Hundred Dollars ($200.00).

10. Compensation paid, None.

11. Name of deceased: Charles Strand; relation of deceased to applicant, husband; applicant was dependent upon deceased at the time of his death and lived with the deceased at the time of his death.

[fols. 21 & 22] 12. Applicant was appointed Special Administratrix of the estate of the deceased by order of County Court in and for Douglass County, Wisconsin, on the 30th day of June, 1925.

Wherefore the applicant prays that the said respondent be required to answer the charges herein and that an order or award be made by the Industrial Commission granting such relief as the applicant may be entitled to in the premises.

Dated at Superior, Wisconsin, this 10th day of August, 1925.

Emma Strand, by Cadigan & Cadigan, Attorneys for Applicant, Suite 23 Wisconsin Bldg., Superior, Douglas County, Wis.

[fol. 23] Docket No. —. File No. E 505-83

Admission of service of copy of application for adjustment of claim in re Emma Strand, Applicant, vs. Northern Coal & Dock Company, Respondent, is hereby admitted at Superior, Wisconsin, this 17th day of August, 1925.

Northern Coal & Dock Co., by Powell & Sprowls, Attorneys.

Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wisconsin.

[fol. 24] [File endorsement omitted]

BEFORE INDUSTRIAL COMMISSION OF WISCONSIN

[Title omitted]

ANSWER TO APPLICATION

The respondent above named, by Powell & Sprowls, its attorneys, for answer to the application herein, respectfully shows and alleges:

1. The respondent specifically denies that at the time of said injury and death the applicant's intestate and respondent were subject to the Workmen's Compensation Act of the State of Wisconsin, but alleges that said injury and the resulting death occurred while the said Charles Strand was working on board a vessel engaged in interstate commerce, and while said vessel was lying in navigable waters, and alleges that the claim of applicant, if any, is cognizable only in admiralty, and respectfully shows and alleges that the Industrial Commission has no jurisdiction to make an award herein.

Subject to its objections to the jurisdicion of the Industrial Commission hereinbefore stated, and without waiving said objections in any way, respondent further shows and alleges:

2. That the above named applicant is not entitled in her capacity as special administratrix, to maintain this proceeding herein and that the said commission is without jurisdiction to make an award in her favor as such special administratrix and subject to this objection to the jurisdic-

[fols. 25-30] tion of the commission hereinbefore stated, respondent further shows:

1. Admits the address of applicant, the address of the employer, the date of accident, the age of applicant and that the applicant was earning sixty-three cents per hour at the time of his death.

2. Admits that the injury resulted in the immediate death of the applicant and that actual notice of the injury and death was had by the respondent at the time thereof.

3. Admits that no compensation has been paid, that the deceased was a husband of Emma Strand and that said Emma Strand was appointed special administratrix of deceased as alleged in said application.

4. As to the allegation that the applicant was dependent upon the deceased at the time of his death, this respondent has not sufficient knowledge or information to enable it to form a belief and therefore denies the same.

5. Respondent denies each and every allegation, matter and thing in said application contained except such as are hereinbefore specifically admitted.

Wherefore, respondent prays that this application be dismissed and that the applicant take nothing herein.

Powell & Sprowls, Attorneys for Respondent, #11 First National Bank Building, Superior, Wisconsin.

[fol. 31] EMMA STRAND, Widow (Applicant),

vs.

NORTHERN COAL & DOCK CO. (Respondent); GEN'L ACCIDENT (Insurance Carrier)

McL., Commissioner or Examiner.
Crabb, Reporter.
10-28-25, Date of Hearing.
Superior, Place of Hearing.
Appearances: For Applicant, C. & C. John Cadigan; for Respondent and Insurer, Power & Sprowls.
Parties subject to Compensation Act? Yes.
Date of Accident? 10-20-24.
Wage Basis? $28.00.
Occupation of Injured? Dock worker.
Age? 61. Married? —— Children? ——.
Notice of Injury to Employer? ——.
Compensation Paid? None.
Employe's Medical Expense? Five, 4.00, 5.00 dollar.
Nature of Injury? Death Instant on Boat.
Date able to work (Healing Period)? ——.
Permanent Disability? ——.
Claim for Penalty. ——.
Attorney's Fees? ——.
Remarks ——.

[fol. 32] File No. E 505-83

Strand

Admission of Service of Notice of Hearing

in re Emma Strand, Applicant, vs. Northern Coal & Dock Co., General Accident, Fire & Life, Respondent, is hereby admitted at Superior, Wisconsin, this 28th day of October, 1925.

Powell & Sprowls, Attys. for Respondent.

(Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wis.

[fol. 33] File No. E 505-83

Admission of Service of Notice of Hearing

in re Emma Strand, Applicant, vs. Northern Coal & Dock Co., General Accident, Fire & Life, Respondent, is hereby admitted at Superior, Wis., this 15th day of October, 1925.

Cadigan & Cadigan, Attorneys for Applicant.

(Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wis.)

---

[fol. 34] Form A-9. Sec. 2394—16

Notice of Hearing

INDUSTRIAL COMMISSION OF WISCONSIN

EMMA STRAND, Applicant,

vs.

NORTHERN COAL & DOCK CO., Respondent; GENERAL ACCIDENT, FIRE & LIFE, Insurance Carrier

To Emma Strand, Wis. Bldg., Superior, Wis., c/o Cadigan & Cadigan; Powell & Sprowls, Attys., Superior, Wis.; General Accident, Fire & Life Ins. Co., Jackson & Martin Sts., Milw.:

To the parties above named and to each of them notice is hereby given that on the Twenty-eighth (28th) day of Octo-

ber, 1925, at nine (9:00) o'clock in the forenoon or as soon thereafter as the matter can be heard at the City Hall, Superior, Wis., a hearing on the application in such matter will be held by the Industrial Commission to determine and adjust the difference in dispute as set forth in the application on file, a copy of which has heretofore been served on all parties in interest.

Dated at Madison, Wis., this 14th day of Oct., 1925.

Industrial Commission of Wisconsin.

NOTE.—Parties may appear at any hearing personally or by agent or attorney. They must make their own proofs, and they consequently should arrange to have their doctor and other necessary witnesses in attendance at the hearings.

File No. E 505-83

Admission of Service of Notice of Hearing

in re Emma Strand, Applicant, vs. Northern Coal & Dock Co., General Accident, Fire & Life, Respondent, is hereby admitted at ——, Wisconsin, this — day of ——, 192-.

—— ——.

(Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wis.)

---

[fol. 35] BEFORE THE INDUSTRIAL COMMISSION OF WISCONSIN

EMMA STRAND, Applicant,

vs.

NORTHERN COAL & DOCK CO., Respondent; GENERAL ACCIDENT, FIRE & LIFE, Insurance Carrier

FINDINGS AND AWARD

Pursuant to notice hearing was had before the Commission in the above matter at Superior, Wisconsin, on October 28, 1925.

Appearances: Applicant in person and by her attorneys, Cadigan & Cadigan, represented by John Cadigan; re-

spondent by its attorneys, Powell & Sprowls, represented by Mr. Sprowls.

Upon the evidence presented the Commission makes the following

## Findings of Fact

That on the 20th day of October, 1924, Charles Strand and the respondent were both subject to the provisions of Sections 102.03 to 102.35, both inclusive, of the Statutes of Wisconsin, and the liability of the respondent for compensation under said Sections of the Statutes was insured by the General Accident, Fire & Life Assurance Corporation; that on said day the said Charles Strand, while in the employ of the respondent and performing service growing out of and incidental to his employment, earned an average annual wage of $1,400.00 or in excess thereof; that Charles Strand sustained personal injury resulting in his death on said day; that the applicant herein is the widow of the said Charles Strand, and was his wife and was living with him [fol. 36] as such at the time of his injury and at the time of his death; that the respondent was given immediate actual notice of said injury and death within thirty days, as provided by Section 102.12 of the Statutes; that the applicant herein necessarily incurred reasonable expense incidental to the burial of the said Charles Strand in a sum in excess of $200.00, for which she is entitled to reimbursement from the respondent.

The Commission has given its careful consideration to the evidence offered in this matter and to the contention of the respondent, particularly that the said Charles Strand at the time of injury was an employe in interstate commerce and, therefore, that the applicant herein is not entitled to any benefits provided in the Workmen's Compensation Law of Wisconsin. The Commission is satisfied from the record in this matter that the greater part of the work of the now deceased prior to his death, while in respondent's service, was on its dock and not on a boat or boats or on navigable waters, although at the time of his injury and death he was in the hold of a boat, which boat was on navigable water. The Commission feels that the respondent in this matter was engaged in a non-maritime bus-

iness, and the mere fact that the now deceased met with his death by reason of an injury while on the boat does not deprive the applicant in this matter of the benefits provided by the Workmen's Compensation Law of Wisconsin.

Now, therefore, upon the facts so found the Commission makes the following

## Award

That within ten days from the date hereof the respondent, Northern Coal & Dock Company, and its insurance carrier, General Accident, Fire & Life Assurance Corporation, shall pay to the applicant, Emma Strand, the sum of $1,146.44, the same being the death benefit to which the applicant herein is entitled which has already accrued, and [fol. 37] being inclusive also of the sum of $200 burial expense incidental to the burial of the husband of the applicant.

And further, that on the 20th day of November, 1925, and on the 20th day of each succeeding month thereafter, or until there shall have been paid to the applicant in monthly installments the sum of not less than $4,653.56, the said respondent, Northern Coal and Dock Company, and its insurance carrier, General Accident, Fire and Life Assurance Corporation, shall pay to the applicant, Emma Strand, the sum of $78.87.

Given under our hands at the City of Madison, Wisconsin, this 14th day of November, A. D. 1925.

Industrial Commission of Wisconsin, by F. M. Wilcox, R. G. Knutson, L. A. Tarrell, Commissioners.

[fol. 38] Docket No. —. File No. E 505-83

Admission of service of certified copy of findings of fact and award in re Emma Strand, Applicant, vs. Northern Coal & Dock Co., Respondent, is hereby admitted at ——, Wisconsin, this — day of ——, 19—.

Northern Coal & Dock Co., by C. E. Kielley, Supt.

Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wisconsin.

[fol. 39] Docket No. —. File No. E 505-83

Admission of service of certified copy of findings of fact and award in re Emma Strand, Applicant, vs. Northern Coal & Dock Company, Respondent, is hereby admitted at Superior, Wisconsin, this 16th day of November, 1925.

Powell & Sprowls, Attys. for Respondent.

Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wisconsin.

[fol. 40] Docket No. —. File No. E 505-83

Admission of service of certified copy of findings of fact and award in re Emma Strand, Applicant, vs. Norther- Coal & Dock Company, Respondent, is hereby admitted at Superior, Wisconsin, this 16th day of November, 1925.

Cadigan & Cadigan, Attys. for Applicant.

Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wisconsin.

[fol. 41] Industrial Commission of Wisconsin, State Capitol, Madison

Commissioners: Fred M. Wilcox, Chairman; R. G. Knutson, Voyta Wrabetz; O. H. Fried, Acting Secretary

Departments: Safety and Sanitation, Workmen's Compensation, Woman and Child Labor, Employment Offices, Mediation and Arbitration, Apprenticeship, Statistics

Nov. 14, 1925.

Emma Strand, Superior, Wisconsin; Northern Coal & Dock Co., Superior, Wis.; General Accident, Fire & Life Co., Milwaukee, Wis.; Powell & Sprowls, Attys., Superior, Wisconsin.

GENTLEMEN:

In re Emma Strand vs. Northern Coal & Dock Company

Enclosed find certified copy of findings of fact and award in the above entitled matter. Kindly sign, detach and return admission of service.

Very truly yours, Industrial Commission. O. A. Fried, Acting Secretary.

Docket No. —. File No. E 505-83

Admission of service of certified copy of findings of fact and award in re Emma Strand, Applicant, vs. Northern Coal & Dock Company, Respondent, is hereby admitted at ——, Wisconsin, this — day of ——, 19—.

—— ——.

Please sign, detach and return promptly to the Industrial Commission of Wisconsin, Madison, Wisconsin.

[fol. 42] Powell & Sprowls, Attorneys and Counsellors at Law, Superior, Wisconsin

Lyman T. Powell, John S. Sprowls

August 22, 1925.

Industrial Commission of Wisconsin, Madison, Wisconsin.

GENTLEMEN:

In re Strand vs. Northern Coal and Dock Company

I enclose herewith, original and copy of answer of respondent in the above entitled matter.

Very truly yours, Powell & Sprowls, by John S. Sprowls.

JSS:I.

[fol. 43] Northern Coal & Dock Co., Operating Department

Superior, Wis., Oct. 21st, 1925.

Industrial Commission, Madison, Wisconsin.

GENTLEMEN: Enclosed please find our accident report No. S-47, covering fatal injuries to Charles Strand, one of our employes which occurred on October 20th, 1924.

Yours very truly, The Northern Coal & Dock Co. C. E. Kielley, Sup't.

RW:EH.

[fol. 44] Form A-12.

Employer's No. (Do not fill in) 505. Accident No. (Do not fill in) 83.

Industrial Commission—First Report of Accident or Industrial Disease

(1) Date of report: ——. Made out by ——. Position: ——.

1—Employer

(2) Employer's name: (Individual or firm name) The Northern Coal & Dock Co.

(3) Office address: (Street, No.) Connor's Point, (City or town) Superior, Wis.

(4) Nature of Business: (Goods produced, work done or kind of trade or transportation) Receiving and shipping of coal.

(5) Insured under compensation act in General Accident, Fire & Life Assu. Corp. ltd, Insurance Co.

(6) Where did accident or exposure occur (if not at office address? (Street, No.) Connor's Point, (City or town) Superior.

2—Injured

(7) Name: Chas. Strand.

(8) Address: (Street, No.) 1024 Grand Ave., (City or town) Superior, Wis.

(9) Age: (Give date of birth, if injured is under 18) 60. (10) Sex: male. (11) Permit on file (if injured was minor under 17): (Yes or No) ——.

(12) Speak English: (Yes or No) Yes. (13) In what department or branch of work employed: (If insured, state classification to which payroll is charged) Operating.

(14) Occupation: (Kind of work done) Handy man and Laborer. (15) Length of experience with this employer: 11 years. (16) Wages per week: (Including bonuses, etc.) $30.24. (17) Hours per day: 8. Days per week: 6.

3—Time of Accident

(18) Date of accident or first illness: (Month, day, year) Oct. 20, 1924. Last day worked: (Month, day, year) Oct. 20, 1924.

## 4—Cause of Accident or Disease

(19) Machine, tool or thing in connection with which accident or disease occurred: (If machine, indicate part) Clam shell on unloading tower. (20) Was machine or part guarded? (Yes or No) ——.

(21) Was guard properly attached at time of accident? (Yes or No) ——. (22) If not, who removed it? ——.

(23) In cases of industrial diseases underline hazard to which exposed. 1. Dust, gas, fumes. 2. Dirt. 3. Darkness. 4. Dampness or heat. 5. Bad air. 6. Fatigue or inactivity. 7. Infections. 8. Infections.

(24) In cases of industrial diseases describe method for control of hazards noted above: ——.

(25) Describe in full how accident occurred, or how employee was exposed to hazard: (Immediate cause of injury or disease) Instantly killed while working in hold of Str. Mathew Andrews by being squeezed in between cleaning up clam of No. 2 tower and outside tank of boat. Was also struck in face by shovel he was working with.

(26) What other conditions helped to cause accident or disease: (Poor light, rough or slippery floors, overcrowding, defective machinery, etc.) ——. (Home conditions, personal hygiene, etc.) ——.

## 5—Nature and Extent of Injury

(27) Nature of injury or disease: (State exactly the part of the person affected and the character of injury or disease.) (If amputation, give exact point.) ——. Killed instantly, Severe laceration and fracture of the nose, chest crushed and right arm broken.

(28) Was accident or disease fatal? (Yes or No.) Yes.

(29) Probable duration of injury or illness: ——.

(30) Attending physicians: (Name: Dr. V. E. Ekblad.) (Address:) Columbia Bldg., Superior, Wis.

(31) Dependents (give names of dependents in fatal cases only.) Write this information on other side of this sheet according to following form: (Name) ——. (Relationship) ——. (Age) ——. (Address) ——.

[fol. 45] November 8, 1924.

E 505-83.

Mrs. Charles Strand, Superior, Wisconsin, 1024 Grand Ave.

Re Charles Strand vs. The Northern Coal & Dock Co.

DEAR MADAM: We have the report of the fatal accident to Strand on October 20th, 1924.

The Northern Coal & Dock Company is subject to the Compensation Act and its liability is insured with the General Accident, Fire & Life Assurance Corporation. On the basis of the report, you become entitled to a maximum death benefit of $5,600 payable, except otherwise ordered, in weekly installments of $18.20 each. You are also entitled to reimbursements for the necessary burial expense, of not to exceed $200.

These matters are usually stipulated to the commission for award and we are disposed to think that the insurance company would be willing to stipulate liability in this case. We are sending them a copy of this letter, together with a suitable form. You will not need to hestiate to sign it when presented to you. We think you will not need to incur any expense for attorneys fees. If any question arises in your mind, a letter to the commission will bring you detailed information.

Will you kindly fill out and return the enclosed blank?

Very truly yours, —— ——, Chairman Industrial Commission.

Wx-IMK.

enc 1.

Copy to General Accident, Fire & Life Assur. Corp., 544 Jackson St., Milwaukee, Wis.

[fol. 46] General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, etc.

Wisconsin Claim Department, Roberts Building, Jackson & Martin Streets

Milwaukee, Wis., Nov. 11th, 1924.

Industrial Commission, Madison, Wisconsin.

GENTLEMEN:

Re O-17440-Northern Coal & Dock Co. Chas. Strand Your #E-505-83

Copy of your letter of November 8th addressed to Mrs. Charles Strand has been received by us. This matter is in the hands of our attorneys and we feel quite confident this accident comes under the Admiralty Law and is not covered under the Compensation Law. You can consider that this is our position unless we notify you to the contrary.

Yours very truly, Wisconsin Claims Dept., by C. B. Roberts.

CBR:MK.

Received Nov. 12, 1924. Industrial Commission.

Claims paid by United States Branch exceed $35,000.00.

[fol. 47] November 26, 1924.

E 505-83.

Mrs. Charles Strand, 1024 Grand Ave., Superior, Wisconsin.

Re Charles Strand vs. The Northern Coal & Dock Co.

DEAR MADAM: Since writing you on November 8, we had a letter from the General Accident, Fire & Life Assurance Corporation, and they are taking the position that this is not a claim under the compensation but one which arises under the Admiralty Law.

The accident report states that the injury occurred in the hold of the Steamer Mathew Andrews and the place of accident does tend to show that the injury is one grow-

ing out of maritime service. If so, the commission will not have jurisdiction as we had supposed.

It is our thought that you had best consult with some good attorney.

Very truly yours, —— ——, Chairman Industrial Commission.

Wx-IMK.

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[fol. 48] Clerk's certificate to statement of evidence omitted in printing.

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[fol. 49] BEFORE THE INDUSTRIAL COMMISSION OF WISCONSIN

[Title omitted]

**Statement of Evidence**

Pursuant to notice, a hearing was had in the above entitled matter at Superior, Wisconsin, on the 28th day of October, A. D. 1925; Examiner F. T. McCormick presiding:

APPEARANCES OF COUNSEL

Cadigan & Cadigan by John Cadigan appeared for the applicant; Power & Sprowels for the respondent.

COLLOQUY

And thereupon, the following proceedings were had and the following testimony taken:

Mr. Sprowels: Subject to our objection to the jurisdiction of the Commission, the man had an accident and met with his death.

Mr. McCormick: And was an employe of the Northern Coal & Dock Company and earned how much?

Mr. Sprowels: 53¢ an hour.

Mr. McCormick: More than $28.00 a week?

Mr. Cadigan: He average $1,500 per annum.

Mr. Sprowels: Yes.

Mr. McCormick: He was hurt on the 20th of October 1924?

Mr. Sprowels: That is right.

[fol. 50] Mr. McCormick: And the applicant is the widow?

Mr. Cadigan: The widow.

Mr. Sprowels: No. That is the point we have raised, because this application is made by a special administrator and we have set up that she is not entitled to maintain the action.

Mr. Cadigan: She was the widow and we move now to amend the application.

Mr. McCormick: Any objection?

Mr. Sprowels: No. The respondent renews its objection to the jurisdiction, set out in the answer and that the admission as to the date of the injury, the wages earned by the deceased and his employment at the Northern Coal & Dock Co., etc., are all made subject to the respondent's objection to the jurisdiction of the Commission.

Mr. McCormick: All right.

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Emma Strand, the applicant, called as a witness in her own behalf, having been first duly sworn, upon examination by Mr. Cadigan, her attorney, testified in chief as follows:

A. Your name is Emma Strand?

A. Yes, sir.

Q. Your age?

A. 52.

Q. You are the widow of Charles Strand?

A. Yes, sir.

Q. He was killed in Superior on the 20th of October, 1924?

A. Yes, sir.

Q. How old was he at the time he was killed?

A. 61.

Q. Have you any children?

A. Yes.

Q. Are they over twenty-one?

[fol. 51] A. Yes, sir.

Q. There are none under twenty-one?

A. No, sir.

Q. Do any of them live at home with you?
A. No sir.
Q. Are they married?

Mr. McCormick: How old?
A. Twenty-six.

Mr. Cadigan: Is she able to take care of herself?
A. Yes sir.
Q. She is not crippled or sick?
A. No, sir.
Q. Where was your husband buried?
A. In Duluth.
Q. You paid the funeral expenses?
A. Yes, sir.
Mr. McCormick: How much?

A. Well, I think everything was between four and five hundred dollars.

Mr. Cadigan: Were you dependent upon him for support at the time of his death?
A. Yes, sir.
Q. Did he live with you?
A. Yes, sir.
Q. Had he lived with you all the time from the time you were first married?
A. Yes sir.
Q. You don't know anything about how he was injured, of course?
A. No sir, they never told me.
Q. How long had Mr. Strand been employed by the Northern Coal & Dock Company?
[fol. 52] A. Twelve or thirteen years—eleven years.
Q. Did you receive any compensation as a result of his death?
A. No sir.
Q. You didn't receive any. I think that is all.

Examination by Mr. McCormick:

Q. Mrs. Strand, where do you live in Superior?
A. I live on Grand Avenue—1024.
Q. Do you own your own home?
A. No, sir.

Q. Own any property?
A. No, sir.
Q. Have you any money saved up?
A. A little bit—not much.
Q. You don't own any real estate?
A. No, sir.

Mr. Cadigan: Have you got anything?
A. A thousand dollars.
Mr. Cadigan: Who is that from?
A. The Yeoman of America.

Mr. McCormick: All right.

Cross-examination.

By Mr. Sprowels:

Q. You are now living in Duluth?
A. Yes, sir.
Q. And when did you move to Duluth?
A. Well, it is not a year ago yet.
Q. Sometime soon after Mr. Strand's death?
A. Yes, sir.
Q. This daughter you make your home with—what is her name?
A. Elizabeth.
[fol. 53] Q. How old is she?
A. Twenty-six.
Q. Before Mr. Strand's death, she made her home with Mr. Strand and you?
A. Yes, sir.
Q. And she has no independent income of her own?
A. No, sir.
Q. Prior to his death she was merely a member of the family?
A. Yes sir.
Q. And Mr. Strand supported both you and Elizabeth?
A. Oh, no. She worked. Made her own living only she lived with us.
Q. Did she contribute anything to a common fund?
A. She didn't have to.
Q. You didn't charge her any board?
A. No, not much. Sometimes she would give a little bit.

Q. That was just voluntary?
A. Yes sir.
Q. And Mr. Strand paid all the household bills, including the groceries, rent and everything?
A. Yes sir.
Q. And your daughter lived in the house and had her meals with you and didn't contribute anything unless——
A. Sometimes she used to give a few dollars. You know how it was.

Mr. McCormick: You were living with your husband at the time he was hurt and died?
A. Yes, sir.

Mr. Sprowels: That's all.

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C. E. KIELLEY, called as a witness on behalf of the ap- [fol. 54] plicant, having been first duly sworn, upon examination by Mr. Cadigan, testified in chief as follows:

Q. You live in the city of Superior?
A. Yes sir.
Q. And what is your occupation?
A. Superintendent of the Coal & Dock Company.
Q. What coal and dock?
A. Northern Coal & Dock Company.
Q. They maintain a dock here?
A. Yes sir.
Q. Where is it located?
A. College Point, facing Superior Bay.
Q. Is it adjacent to the bay?
A. Yes sir.
Q. How long have you been such Superintendent?
A. About six years.
Q. Where is the main office of the Northern Coal & Dock Company?
A. Cleveland, Ohio.
Q. What is the business of that company?
A. Mining and handling coal.
Q. Also selling coal?
A. Wholesale.
Q. Wholesale dealers in coal?
A. Yes, sir.

Q. Does the company own any boats of its own?

A. No sir.

Q. Any railroads that you know of?

A. No, not that I know of.

Q. This dock at Superior, what is the nature of the work done on that dock?

A. Unloading coal from—both hard and soft—from [fol. 55] boats and storing the same on the dock and reclaiming and loading it into cars for shipment.

Q. For shipment to who?

A. Different dealers out around through the south and west and northwest.

Q. That is, into different states?

A. Yes, sir.

Q. And these dealers are dealers who purchase the coal?

A. Yes, sir.

Q. Do you know where the coal is bought—through what office?

A. It is bought through the Cleveland office.

Q. Now how is the coal brought to Superior from the lower lake ports?

A. By boats.

Q. And these boats are unloaded at your dock?

A. Yes, sir.

Q. Do you know a steamer by the name of the Matthew Andrews?

A. Yes, sir.

Q. Has that boat been to your dock at different times?

A. Yes, sir.

Q. Do you know one Charles Strand?

A. Yes, sir.

Q. Was he an employe of your company?

A. Yes, up to the time of his death.

Q. How long had he been an employe in your company?

A. Approximately eleven years.

Q. What was the nature of his work on the dock on October—strike that. What was the general nature of his work on the dock at the time he was killed?

A. Well, at the time of unloading a boat, he was to take a position, sometimes in the boat and sometimes as an oiler and sometimes he was working on the dump cars in the hard coal shed.

[fol. 56] Q. What do you mean by an oiler?

A. An oiler—oiler on the towners or cable right of way system.

Q. He had nothing to do with oiling the machinery on the boat?

A. Yes, at times I had him oil the clam shell that goes down in the boat.

Q. That clam shell is attached to the dock by cables?

A. Yes, sir.

Q. He would oil the clam shell at different times when so attached?

A. Yes, sir.

Q. Did he do much work as an oiler?

A. Only when we had a boat in.

Q. When you had a boat in, his oiling would be on the conveyances the clam shell buckets?

A. No, sir.

Q. Where else would he oil—the pulleys and hoists, etc?

A. Yes, sir.

Q. When there was no unloading of boats to do, what was his general occupation?

A. He had several different occupations around the dock. One was elevator man and scraper man.

Q. What were his duties as elevator man?

A. An elevator man takes care of the machinery used in elevating the coal to be screened.

Q. And the scraper man?

A. A scraper man runs the machine that hauls the coal from the different parts of the dock to the conveying dummies that convey the coal to these elecators.

Q. What duties, if any, did he have with reference to loading cars?

A. Well, we had broken in—him in that spring as a spare car loader man to take a job as car loader in times of emergency.

[fol. 57] Q. Was there any coal loaded directly from the boats to the cars directly?

A. Hardly, no. It has to pass through the dock.

Q. As a car loader, he would be loading coal placed on the dock and thence into the cars?

A. Yes, sir.

Q. And that was his employment. That is what he did most of the time?

A. Part of the time.

Q. What percentage?

A. At times when we didn't have a boat in, he would be on either one of those three jobs—elevator man, scraper man or car loader man. He was a kind of a general utility man.

Q. Could you say about what part of his work was given over to these different employments you have stated on the dock?

A. I couldn't state just exactly.

Q. I don't want it exactly—your best estimate?

A. I would say possibly half his time was given over to work as scraper man and half to—divided between car-loader and elevator man, that is, in times when there was no boat in.

Mr. McCormick: What part of his time was spent on the boat?

A. Well, I have a record here of the number of hours he worked on the boat during his employment on the dock.

Mr. McCormick: Have you gone over it to figure what proportion of hours——

A. I did not. I have it—the actual hours.

Mr. Cadigan: How long a time does the record cover?

A. The time of his employment; ten years in fact. That is what it covers.

Q. Going back to—from the time you broke him in as a car loader can you give an estimate of the time he spent on the [fol. 58] boat and on the dock?

A. I couldn't give it just exactly. I would say half the time he spent on the carloader, at that time. He was taken off that carloader job for so many different things—he was kind of a general utility man, that we could use most any place.

Q. How much time since you broke him in as a carloader, did he actually spend on the boats?

A. I have a record of that—since he became carloader?

Mr. McCormick: When was that, that he became a car-loader man?

A. 1924. The year—I would like to refresh my memory—in 1924, he worked 117½ hours on 31 boats and the balance of his time was divided up you might say equally among the other three jobs.

Q. And he was steadily employed?

A. Steadily employed.

Q. By the other three jobs, you mean work on the docks or cars?

A. Loading cars or elevator man.

Mr. McCormick: When was it he became carloader?

A. In the spring of 1924, as I recollect, he was placed on the carloader. Of course, I had him practicing before that to learn the job.

Mr. McCormick: You said 117 hours on 31 boats. Did he work on any others?

A. Not in 1924.

Q. He was steadily employed up to the time of his death?

A. Yes, he was one of the oldest employes.

Mr. McCormick: Do you know how many hours he worked between the time he was given the job of carloader and——

A. I haven't that; I can get it from our records.

Mr. Sprowels: I might state our position being that the jurisdiction here depends upon where the injury occurred, regardless of his employment, I didn't ask Mr. Kielley to make up a detailed statement. I did ask him to make up [fol. 59] a statement of his time and I would be glad to furnish any other information desired.

Mr. McCormick: If somebody knows approximately how many hours that man put in in a day——

Mr. Cadigan: What was the average hours per day Mr. Strand worked from the spring of 1924?

A. He averaged nine hours.

Q. Up to the time of his death?

A. Yes, sir.

Mr. McCormick: What you say the spring of 1924——

A. From the opening of navigation.

Mr. McCormick: When does that open?

A. April 30th, 1924. That is, ours opened—that was our first boat.

Mr. McCormick: Sundays as well as other days?

A. Yes, whenever it was necessary to work.

Mr. McCormick: You don't know how often, approximately, that would be?

A. I don't know. I would have to go back through our time tables and get all that data.

Mr. Cadigan: Would it average a couple of Sundays a month.

A. I don't know as I would want to state. Sometimes we don't work for a month on Sunday. This year we only worked a couple or three Sundays.

Q. You didn't work any more than that?

A. Four Sundays for the whole season.

Q. Last year what have you to say about Sunday work?

A. 1924. I couldn't say now. I can get that in the records for you. They can get the number of hours Mr. Strand worked—outside of the boat work.

Mr. McCormick: In working as a carloader, where did he work?

[fol. 60] A. That was on the carloader, a machine for loading cars, in between the loading buckets.

Mr. Sprowels: I think what Mr. McCormick wants to know is whether it was on the shore or on the boat?

A. On the shore.

Mr. Cadigan: Did he unload or help to unload or load cars directly from the dock to the boat or the boat to the dock?

A. Not while he was employed as a car loader.

Q. As I understand it, during the season of 1924, there was no direct loading from boats to cars?

A. No, there is no direct loading from boats to cars. That is, in the sense of loading right out of the boat into the car. It has to pass through the storage process, before it gets to the cars.

Q. You say navigation opened——

A. With us it opened April 30th, 1924.

Q. You remember, I presume, the day Mr. Strand was killed?

A. Yes, sir.

Q. When was the last time you remember seeing him before he was killed?

A. The day before.

Q. What work was he doing?

A. The day before he was on the car loader.

Q. And he reported to work on the morning of the 20th of October 1924?

A. Yes, sir.

Q. What time was he at work?

A. Seven o'clock.

Q. Do you know what he did that morning?

A. I think the first thing was to go on the boat—he was placed on the boat.

Q. By whose orders?

[fol. 61] A. The general foreman.

Q. And that boat was the Matthew Andrews?

A. Yes sir.

Q. For what purpose was he ordered on the boat?

A. To help clean up the coal left on the boat outside the reach of the claim shell.

Q. Were others ordered into the boat at the same time?

A. Yes sir.

Q. How many others?

A. Eighteen.

Q. They all went down in the same hold of the boat?

A. No—they were divided into three gangs.

Q. Six men to a gang?

A. Yes, sir.

Q. And as I understand, the purpose of sending them in, was to scrape up the coal in the wings of the boat so as to shove it out where the buckets could pick it up?

A. And to swing the clam shell to reach the coal if necessary.

Q. And they used a particular kind of clam which they call a cleanup clam?

A. Yes, sir.

Q. That clam has a much wider reach than the ordinary clam?

A. Yes, sir.

Q. Do you know about what time in the morning he was killed?

A. About ten o'clock.

Q. And about what time was it he went into the hold of the boat?

A. About seven o'clock.

Q. And did you learn how he was killed?

A. The foreman's report that I got says he was squeezed between the clam shell and the side of the boat.

Q. Was he using any implement that morning in con-

[fol. 62] nection with his work?

A. Yes, a shovel.

Q. In the ordinary course of events, having in mind the nature of the work of Mr. Strand there that morning, how long would he have been in the boat before the day was completed?

A. About six or seven hours, I would say. From seven o'clock in the morning.

Q. Had he done that work before?

A. Yes, sir.

Q. Very often?

A. Well, I——

Q. Well, in previous years and up to this date, had he been in there every day? That season of 1924, from the spring navigation until he was hurt, was he on any other boats doing that kind of work?

A. In the 31, he didn't work five days in the hold of a boat, but he was otherwise employed in unloading boats.

Q. Or working on the dock?

A. No, otherwise employed, using other duties in connection with the vessels' unloading.

Q. Manning the hoists?

A. Yes.

Q. He would be on the dock then?

A. Well, as it happens, he was in the hard coal shed dumping cars.

Q. Have you a record of the actual time he spent in the hold of a boat doing the kind of work he was doing at the time he was killed?

A. Yes, 117½ hours on 31 boats; five of those 31 boats he worked in the shed.

Mr. McCormick: When you say 117½ hours, you mean hours on a boat?

A. Yes, 117½ hours he was actually on or in a boat.

Mr. Cadigan: What is his designation on the payroll?

A. Carloader man.

[fol. 63] Discussion off the record.

Mr. McCormick: It is agreed then that Mr. Strand took up the position of carloader operator January 1st, 1924?

Mr. Cadigan: When did the season of navigation close in 1924?

A. We unloaded the Matthew Andrews—well, I haven't got that date.

Q. Ordinarily, when does it close, approximately?

A. Ordinarily—well, let's see, I have the record for a number of years, November 2nd,——

Q. That was 1924?

A. No, that was 1916; 1918 December 3rd; 1920 October 31st.

Q. Have you got the figures on 1924?

A. 1924 I haven't got. I just have up to the time of Mr. Strand's death.

Q. 1923?

A. 1923, December 1st, 1923. That was the close of navigation.

Q What were Mr. Strand's duties from December 1st, 1923, to the opening of Navigation in 1924?

A. General utility man; elevator man; scraper man and laborer.

Q. And he was employed during that time on the dock?

A. I think he was, yes.

Q. And there was no unloading of boats, of course?

A. No, not during that time.

Mr. Cadigan: That's all.

Mr. McCormick: Did Mr. Strand die instantly?

Mr. Sprowels: I would say yes.

Mr. Cadigan: From the investigation I made, I found he was hit and never showed a sign of life. I guess he was picked up in a bucket and he was dead.

Mr. McCormick: He died on the boat?

Mr. Cadigan: On the boat.

[fol. 64] Mr. Sprowels: He died on the boat. I want to examine Mr. Kielley now as our own witness. I have a few questions.

Mr. McCormick: All right.

Whereupon, the witness Kielley was examined by Mr. Sprowels on behalf of the respondent and testified further in chief as follows:

Q. You have already testified as to the employment of Mr. Strand?

A. Yes sir.

Q. And you were Superintendent in October 1924, at the time of Mr. Strand's death?

A. Yes.

Q. Mr. Kielley, all the coal received by the Northern Coal & Dock Company is received by boat?

A. Yes sir.

Q. And it is all shipped out by rail?

A. Yes, sir.

Q. And also you open navigation here, not in reference to your dock alone, but in general, beginning usually about what time?

A. Around about April 15th to May 15th.

Q. Depending upon the season?

A. Yes sir.

Q. And you close about what time, usually?

A. Well, from November 1st to December 15th.

Q. I believe after December 1st there is a higher rate of insurance in effect?

A. Yes, sir.

Q. So that closes your season December 1st?

A. Yes, sir.

Q. And the close of navigation also occurs depending upon the season?

A. Yes, the opening of the Soo Locks.

Q. So that between December 1st and April 15th, no boat [fol. 65] enters or leaves Duluth or Superior?

A. No, sir.

Q. And the work carried on there on the dock during that time is shipping out coal?

A. Shipping out coal, yes.

Q. So that the work of unloading boats is all the work which goes on at your dock, roughly during a period of seven months?

A. About seven months.

Q. So that you don't keep in your employe any class of employes whose work is confined to unloading boats?

A. Not——

Q. In other words you don't have in your employe on the dock any class of employes who do nothing else but unload boats?

A. No, sir.

Q. The men who do the work of unloading boats during the season of navigation, are men whom you retain in your employe throughout the entire twelve months of the year?

A. Yes.

Q. And you give them other employment during the time navigation is open?

A. Yes, sir.

Q. And during the open navigation from April 15th to December 1st, roughly, you don't have a boat at the dock every day?

A. No, sir.

Q. In other words, you gave a list of the number of boats Mr. Strand worked on in 1924 as 31?

A. Yes, sir.

Q. Was that approximately all the boats unloaded at your dock during that season?

A. Evidently not all the boats unloaded, because we have—we stopped taking the record with the Matthew Andrews.

[fol. 66] Q. Do you know whether or not it was approximately all the boats unloaded at the dock in the navigation season of 1924 up to October 20th?

A. Yes, that was all.

Mr. McCormick: Did you load some?

A. Unloaded boats.

Mr. McCormick: Didn't you load any?

A. No, sir.

Mr. McCormick: It was all shipped by rail?

A. All shipped by rail from the dock, yes, sir.

Mr. Sprowels: So that roughly speaking, you have on an average of perhaps five boats a month at the dock?

A. Approximately five boats a month.

Q. And about how long on the average does it take to unload a boat of average size?

A. Well, our unloading dispatch is about on an average of fifteen hours and a half.

Q. So that then, you would have approximately seventy-five hours work in unloading boats a month, at your dock?

A. Yes, sir.

Q. And the rest of the time the employes have to be given other work?

A. Yes, sir.

Q. And you do give them other work?

A. Yes, sir.

Q. Now this particular boat you have referred to as the Matthew Andrews, have you a bill of lading covering the cargo that was being unloaded at the time of Mr. Strand's death?

A. Yes, I have copies.

Q. Showing you Respondent's Exhibit # 1, that is a copy of the bill of lading covering that shipment?

[fol. 67] A. Yes, sir.

Q. And that shows that the shipment originated at what port?

A. Coal loaded into boat at Toledo, Ohio.

Q. That is a port on Lake Erie?

A. Yes, sir.

Q. And what roughly is its capacity in tonnage?

A. The tonnage is approximately ten thousand tons.

Q. Then that shipment of coal came by way of the Great Lakes, through the Soo to the dock at the Northern Coal & Dock Company here in Superior?

A. Yes, sir.

Q. And that was being unloaded at the time of Mr. Strand's death?

A. Yes, sir.

Q. Now you have already testified that Mr. Strand, at the time of his death, was working in the hold of the vessel?

A. Yes, sir.

Q. And the vessel was lying at your dock?

A. Yes, sir.

Q. Do you know what draught—I mean the depth of water at your dock there?

A. Approximately twenty-one to twenty-two feet.

Q. It is part of the navigable harbor in the Duluth-Superior Harbor?

A. Yes, sir.

Q. Showing you Respondent's Exhibit #2, I will ask you if this is a map of the Duluth-Superior Harbor, including the city of Superior and the city of Duluth?

A. Yes, to the best of my knowledge, this is a government chart.

Q. I will ask you to take a pencil and mark and "X" showing the location of the Northern Dock.

Location marked by the witness.

[fol. 68] Q. Now with reference to the property which you have marked, the property of the Northern Coal & Dock Co., will you indicate on which side the boat was lying in which Mr. Strand worked at the time of his death?

A. Next to the side of the dock.

Q. What does that show as the draught or depth of the water?

A. The draught is called twenty-one feet. That is—all this sight is navigable water.

Mr. McCormick: What is that—Superior Bay?

A. Superior Bay.

Mr. Sprowels: And that is navigable for all vessels coming to the head of the lakes?

A. Yes, sir.

Q. And that is the place where the vessels unload at your dock?

A. Yes, sir.

Mr. McCormick: Do you know whether that was made navigable by artific-al means or otherwise? Do you know whether that was always at that depth?

A. I do not. I presume that it was artificially made. I know there is a governmental charted channel with government marks. I know those lights are there.

Mr. Sprowels: But Superior Bay is a port and is really the principal port of the Duluth-Superior Harbor?

A. Yes, sir.

Q. And it is a port of the harbor surrounding—which is brought up from the lake?

A. Yes, sir.

Q. And all vessels plying in the trade at the head of the lakes, navigate Superior Bay?

A. Yes, all have to come in and out Superior Bay.

Mr. Sprowels: I would like to offer in evidence Respondent's Exhibit #1.

[fol. 69] Mr. McCormick: Did you see this?

Mr. Cadigan: Yes.

A. That is the fourth copy, I think.

Mr. Sprowels: And I would like to offer Respondent's Exhibit #2 and have it made a part of the record, without asking the Commission to carry it down to Madison.

Mr. McCormick: All right.

Mr. Sprowels: Now Mr. Kielley, Mr. Strand at this time was working inside of the boat?

A. Yes, sir.

Q. Down in the hold of the boat?

A. At the time of his death?

Q. And at that time, the boat was afloat in the Superior Bay?

A. Yes.

Mr. McCormick: Was it tied to the dock?

A. Tied to the dock, yes. Secured to the dock by lines.

Mr. Sprowels: And that is the customary way of doing when you unload boats?

A. Yes.

Mr. McCormick: How long had it been at the dock?

A. I think it put in early in the morning before Mr. Strand was hurt and we had started to cleanup—I would have to look that up from my records before I could—but if I remember right, we started the day before and dug down there and were ready to cleanup at seven o'clock on the morning of October 24th and they had cleaned up two hatches before that.

Q. And although Mr. Strand's duties were designated as that of a carloader, he was during that season of 1924, taken off that work and put to work helping to unload boats when you had a boat to unload?

A. Yes, that was more of a convenience or as much of a convenience for the men as anything else. We couldn't afford to carry a loader man and lay him off every time a [fol. 70] boat came in to be dispatched. We took care of our own men with their permission.

Q. In other words, what you mean is that if you had employes who did nothing else but unload boats, they would only be employed on an average of five days a month for seven months in the year?

A. Yes, sir.

Q. And the rest of the time they would be without employment?

A. Yes and another thing. At the time of unloading a boat, we can't very well load cars. Very nearly all our organization is used in unloading boats and any man who had a particular job that wasn't connected with unloading a boat would naturally have to be layed off or accounted for some way and it is hard to account for an expense like that in an ordinary day.

Mr. Sprowels: Cross examine.

Cross-examination.

By Mr. Cadigan:

Q. What other designation have you on the payroll besides that of carloader operator?

Mr. McCormick: You mean for Mr. Strand?

Mr. Cadigan: No, for the other employes.

A. You mean relative to Mr. Strand——

Q. No, other employes.

A. There is scraper men, hoisters, bridge operators, grippmen, laborers, firemen, engineers, electricians, blacksmith, carpenters.

Q. What are the duties of the hoister?

A. A hoister has to take—operates the machine that takes the coal out of the boat or reclaims the coal from the dock or the bridge.

Q. Ordinarily, Mr. Strand's duties, such as he was engaged in at the time he was killed, did not commence until the boat was nearly unloaded?

A. Partially unloaded—half unloaded.

[fol. 71] Q. Was the hoisters' work exclusively hoisting?

A. No, not on our dock; we used them as repair men.

Q. Did you hire men to do nothing but hoisting?

A. No, sir.

Mr. McCormick: What proportion of your men never got on the boat at all?

A. Just about half of the organization.

Mr. McCormick: Never got on the boat.

A. Never got on the boat.

Mr. Cadigan: And what do they do?

A. The hoisters on the towners.

Q. They are engaged in unloading boats?

A. Oh, yes.

Mr. Sprowels: What do you mean—were actually on the boat?

Mr. McCormick: What proportion of your men who have nothing to do with unloading boats at any time?

A. No portion of our organization. The—well, unless it would be the blacksmith. The blacksmith has nothing to do with the unloading of a boat excepting in case of an accident where the claim shell would be damaged and then he is required to go down and fix it.

Mr. McCormick: Is there any portion of your men who never have anything to do with loading or unloading a boat?

A. No, I don't believe there is a man.

Mr. McCormick: That is your best judgment?

A. Yes, sir.

Mr. Cadigan: That's all.

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STATEMENT OF COUNSEL

Mr. Sprowels: At the close of the testimony, counsel for the respondent makes this statement into the record. Respondent contends that the Commission has no jurisdiction to make an award in this matter for the reason that the death of Charles Strand was the result of a maritime tort; that the admiralty and maritime jurisdiction conferred by the constitution and laws of the United States is exclusive; [fol. 72] and that such jurisdiction is retained by the Federal District Courts under Article Three (3) Section Two (2) of the constitution of the United States; that making of an award in this matter on the ground that the said accident and death are within the Workmen's Compensation Act of the State of Wisconsin, is a violation of the said Article Three (3) Section Two (2) of the constitution of the United States as the same has been construed in the following cases: Knickerbocker Ice Co. vs. Stewart, 25 S. W. 149; before the Supreme Court 438; 64 Law Edition 834. State of Washington vs. W. C. Dawes Co., 44 Supreme Court, 302; 264 U. S. 219. Gonsolves vs. Engineers Dry Dock Repair Co., 45 Supreme Court, 39; Engineers Dry Dock Repair Co. vs. Dahl, 45 Supreme Court, 157. Now I

believe the last three cases refer to local cases in the Supreme Court of the United States, passed on since this case was raised before the Commission and previous to the filing of it and I don't believe I want to ask leave to file a brief, further than calling the attention of the Commission to those cases.

Mr. McCormick: What is the least damage or maximum damage in an admiralty death case?

Mr. Cadigan: Maintenance, care etc., except in death—there wasn't any.

Which concluded all the testimony offered and received in the foregoing matter.

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[fol. 73] RESPONDENT'S EXHIBIT

No. C-104. Cleveland, Ohio, Oct. 15th, 1924.

Shipped, in good order, by The Youghioghney & Ohio Coal Co., for account and at the risk of whom it may concern, on board the Str. Mathew Andrews whereof —— —— are Agents, the following articles, consigned as below, and in like good order the said Agents agree that said vessel shall deliver the same (the dangers of navigation only excepted), to the consignee or order, upon payment of charges as noted below, free of handling, if cargo is delivered during the season of 1924, and that the shipper shall not be held liable for any delay at port of destination. If not so delivered, then the freight is to be paid at current rates when delivered.

All property on deck at risk of vessel and owners.

If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at the time of shipment or at beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for *for* contribu-

tion in General Average, or for any special charges incurred, but with the ship owner shall contribute in General Average, and shall pay such special charges, as if such damage or disaster had no- resulted from such fault, negligence, latent or other defect or unseaworthiness.

In witness whereof, the Agents, of said vessels hath affirmed to 4 Bills of Lading of this tenor and date, * * * of which being accomplished, the others to stand void.

Northern Coal & Dock Co., Superior, Wisc.

Loaded at Toledo Ohio

| | | |
|---|---|---|
| 2744-1100 | Tons | W. Va. Nut & Slack. |
| 4333-0400 | " | W. Va. Nut & Slack. |
| 3094-0700 | " | W. Va. 1½ Lump. |
| 277-0800 | " | W. Va. 4" Block. |
| 214-1600 | " | W. Va. Egg. |
| 10664-0600 | Tons. | |

Lake Freight: As Arranged —Per Net Ton.

The Kinsman Transit Co.

Copy.

The Youghiogheny & Ohio Coal Co., by J. D. Collins, Auditor.

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[fol. 74] [File endorsement omitted.]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

DIRECTIONS FOR FINDINGS—Filed September 3, 1926

By the Court: The facts in this case are not in dispute. The following salient facts seem to be agreed upon to-wit:

(1) That the plaintiff, Northern Coal & Dock Company, operated a coal dock at Superior, Wisconsin. That its business was the mining, hauling, and selling of coal at retail.

(2) That said company neither owned now operated any ships.

(3) That ships owned by other persons or corporations came to the said company's docks laden with coal to be unloaded at its docks. That such ships came during about seven months of the year and in 1924 numbered about 31 ships. That the deceased and other employees of the plaintiff company took part at various times in the unloading of the ships, irrespective of the general nature of their work for the plaintiff company at other times.

(4) That the deceased, Charles Strand was employed by [fol. 75] the plaintiff company to perform services in various capacities, such as: car loading, oiler, elevator man, and scrapper man. That he worked on an average of nine hours a day. That during the 1924 open boat season he had worked 117½ hours in unloading ships. That five days of that time he worked in the hold of boats. That he was killed while unloading coal in the hold of a boat.

(5) That the boat in which he was killed was engaged in maritime service and was at the time lying in navigable waters.

The only question presented upon this appeal is:

Was the deceased killed while performing maritime service? The defendant Industrial Commission made a finding that he was not, and make an award against the plaintiff and in favor of the widow of the deceased.

An examination of state and federal authorities discloses that no hard and fast line can be drawn. That there are no set rules laid down for guidance and that the facts of each case must determine the decision. It seems that the findings and award of the defendant Industrial Commission must be affirmed on the following basis, to-wit:

The deceased had been in the continuous employment of the plaintiff company for a number of years immediately prior to his death. The plaintiff company was in no sense in a maritime business. Therefore the contract of service by the deceased for the plaintiff company could not have been made in contemplation of the aplpication of the rules of Maritime law. Both parties were under the Wisconsin Compensation Act which prescribes an exclusive remedy in case of any injury; therefore again it must be said that

their contract was in contemplation of that act, and not in [fols. 76 & 77] contemplation of the application of the rules of maritime law. The fact that the deceased was injured while working in a boat which was in maritime service and lying in navigable waters does not of itself make the work he then performed a maritime service, Grant Smith—Porter Ship Company vs. Rhode, 257 U. S., 469; 66 Law Edition, 321. None of the contractual obligations, expressed or implied, between the deceased and the plaintiff company had any relation to navigation or maritime service. The fixing of the compensation for the death of the deceased by the defendant Wisconsin Industrial Commission under the Wisconsin Compensation Act cannot possibly interfere with the uiformity of the administration of the maritime law. Washington vs. Dawson, 68 Lawyers' Edition, 339. The contract of service; the contract of sompensation in the event of injury; the place of contract; the place of service; and the persons to the contract were all local in the State of Wisconsin and entered into in contemplation of Wisconsin Laws. The rules of maritime laws or maritime service was never contemplated by any party to apply to their dealings. By the Award made under the Wisconsin Compensation Act, the actual contemplated contract of all the parties is fully carried out and by the same law, no other rules of law or rights are hampered, violated, or interfered with.

The attorney general may prepare the proper judgment concerning the order of the industrial commission dismissing the complaint and submitting same to all opposing counsel before it is presented for signature.

No costs are allowed in this action.

Dated September 3, 1926.

H. E. Manzer, Official Reporter.

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[fol. 78] [File endorsement omitted]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

JUDGMENT—Filed September 20, 1926

The above entitled matter coming on for hearing, before the court, without a jury, upon the return of the above

named defendant, Industrial Commission of Wisconsin, John S. Sprowls of Powell & Sprowls and Chas. B. Quarles of Lines, Spooner & Quarles appearing on behalf of plaintiffs, J. A. Cadigan of Cadigan & Cadigan appearing on behalf of the defendant, Emma Strand, and Mortimer Levitan, Assistant Attorney General, appearing on behalf of the defendant, Industrial Commission of Wisconsin, and the court having heard the arguments of counsel, and being fully advised in the premises, and having taken the matter under advisement, and having, on the 3rd day of September, 1926, filed its directions for judgment, confirming the award of the Industrial Commission,

Now, therefore, on motion of the said attorney for the Industrial Commission of Wisconsin.

It is adjudged that the award of the Industrial Commission of Wisconsin, dated November 14, 1925, ordering the [fols. 79 & 80] plaintiffs to pay to the defendant Emma Strand certain sums as death benefits because of the death or her husband Charles Strand, be, and the same hereby is, in all respect confirmed.

Dated at Madison, Wisconsin, this 20 day of Sept., 1926.
By the Court:

August C. Hoppmann (Cory.), Judge.

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[fols. 81-83] In Circuit Court of Dane County

[Title omitted]

Notice of Judgment—Filed October 12, 1926

Please take notice that a judgment, of which a true and correct copy is hereto attached, was duly entered in the above entitled action in the Circuit Court for Dane County, Wisconsin, on the 20th day of September, 1926.

Dated at Madison, Wisconsin, this 23rd day of September, 1926.

Yours, etc., Herman L. Ekern, Attorney General, Mortimer Levitan, Assistant Attorney General, Attorneys for Defendant Industrial Commission of Wisconsin.

To Powell & Sprowls, Lines, Spooner & Quarles, of Counsel, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fols. 84 & 85] Service of Notice of Entry of Judgment in the above matter admitted this 24'' day of September, 1926.

Powell & Sprowls, Attorneys for Plaintiffs.

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[fols. 86 & 87] In Circuit Court of Dane County

[Title omitted]

Service of Notice of Appeal—Filed October 1, 1926

Due and personal service of the annexed Notice of Appeal is hereby admitted at the City of Superior, in said State, on the 30th day of September, 1926.

Cadigan & Cadigan, Attorneys for Defendant Emma Strand.

Due and personal service of the annexed Notice of Appeal is hereby admitted at the City of Madison, in said State, on the 1st day of October, 1926.

Herman L. Ekern, *Atty. Gen.*, Attorney General of Wisconsin, Mortimer Levitan, Asst. Atty. Gen., Attorneys for Industrial Commission of Wisconsin.

Due and personal service of the annexed Notice of Appeal is hereby admitted at the City of Madison, in said State, on the 1 day of October, 1926.

Herbert F. Hansen, Clerk of Circuit Court of Dane County.

[File endorsement omitted.]

[fols. 88 & 89] IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed October 1, 1926

Please take notice that the plaintiffs above named hereby appeal to the Supreme Court of the State of Wisconsin from the judgment rendered by the above named court herein, entered on the 20th day of September, 1926, affirming the award of the Industrial Commission of Wisconsin, dated November 14, 1925, and ordering the plaintiffs to pay the defendant, Emma Strand, certain sums as death benefits because of the death of her husband, Charles Strand, and from the whole of said judgment.

Dated September 29, 1926.

Powell & Sprowls, Attorneys for Plaintiffs, #11 First National Bank Building, Superior, Wisconsin.

To Messrs. Cadigan & Cadigan, Attorneys for Defendant, Emma Strand.

To the Attorney General, State of Wisconsin, Attorney for Defendant, Industrial Commission of Wisconsin.

To Herbert S. Hanson, Clerk of the aforesaid Court.

[File endorsement omitted.]

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[fols. 90 & 91] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 92] Minute entry of argument and submission Feb. 12, 1927, omitted in printing.

[fol. 93] IN SUPREME COURT OF WISCONSIN

NORTHERN COAL & DOCK COMPANY, a Corporation, and GENERAL Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Plaintiffs and Appellants,

vs.

EMMA STRAND and INDUSTRIAL COMMISSION OF WISCONSIN, Defendants and Respondents

ORDER TO SHOW CAUSE—March 18, 1927

To Messrs. Powell & Sprowls and Messrs. Lines, Spooner & Quarles, Attorneys for Appellants; Messrs. Cadigan & Cadigan, Attorneys for Respondent Strand. Attorney General for Respondent Industrial Comm.

It appears without dispute that the injuries received by the deceased Strand resulted in instand death. The Court requests that the attorneys for the parties on or before April 10th, 1927, file briefs as to why this case is not ruled by Bloom v. Furness-Withy & Co., 293 Fed. Rep. 98, for the reasons stated in paragraphs (2), (3), (4) and (5) in the opinion in that case.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin.

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[fols. 94 & 95] IN SUPREME COURT OF WISCONSIN

NORTHERN COAL & DOCK COMPANY, a Corporation, and GENERAL Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Plaintiffs and Appellants,

vs.

EMMA STRAND and INDUSTRIAL COMMISSION OF WISCONSIN, Defendants and Respondents

Dane Circuit Court

Opinion by Justice Rosenberry

JUDGMENT—May 3, 1927

This cause came on to be heard on appeal from the judgment of the Circuit Court of Dane County and was argued

by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Dane County confirming the award of the Industrial Commission, be, and the same is hereby, affirmed.

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[fol. 96] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

OPINION—Filed May 3 ,1927

Appeal from a Judgment of the Circuit Court for Dane County, August C. Hoppmann, Judge

Workmen's Compensation Liability and Maritime Law

The Northern Coal & Dock Company having its principal office at Cleveland, Ohio, is engaged in mining, distributing and selling coal at wholesale. It does not own or operate any vessels or railroad lines. It has a dock situated on Superior Bay, a navigable portion of the Duluth Superior Harbor. Boats from Lake Erie ports discharge their cargoes at this dock. In October, 1924, the deceased Charles [fol. 97] Strand was in the employ of the Company as a car loader, but at times in the discharge of his duties he was required to assist in the unloading of boats. He was regularly employed by the dock company. They, however, had no employes who worked exclusively at unloading boats. The regular employes on the dock were called upon at such times as boats were being unloaded to go into the boats and help to unload the coal. The company had an average of about five boats per month during the season of navigation and it took about fifteen and one-half hours to unload a boat of average size. The employes were engaged approximately seventy-five hours in each month in unloading boats at the dock and during the remainder of the time were given other work. During the year 1924, the deceased had worked 117½ hours on the 31 boats. On October 20, 1924, the deceased Strand was working in the hold of the steamer

Matthew Andrews, which was then lying at the dock, cleaning up coal in the hatches and shovelling it out so that the clamshell could pick it up. While so engaged he was caught between the clamshell and the side of the boat and died almost instantly as a result of his injuries. The vessel in which he was working at the time of his death was the steamer Matthew Andrews, which had brought a cargo of coal from Toledo, Ohio, to Superior by way of the Great Lakes. The vessel was lying in navigable waters and was made fast to the dock by lines in the customary way of securing boats while they are being unloaded. The clamshell was a part of the dock equipment and was operated by the dock company.

[fol. 98] Strand's earnings were in excess of $1,400 per annum and the funeral expenses amounted to more than $200. Upon proceedings had before the Industrial Commission the widow Emma Strand was awarded compensation, an action was begun in circuit court of Dane county to review the action of the Industrial Commission. Upon the trial the award of the Industrial Commission was affirmed by the judgment of the circuit court and from that judgment the plaintiffs appeal.

[fol. 99] ROSENBERRY, J.:

The Northern Coal & Dock Company employer and the deceased employe Strand were both under the workmen's compensation act (Chap. 102, Wis. stats. 1925). Were it not for the fact that the deceased sustained the injuries on board a vessel lying in navigable waters, from which he died, it is conceded that the dock company would be liable under the workmen's compensation act. It is the contention of the dock company that the commission had no jurisdiction to make an award in this matter for the reason that the death of Charles Strand was the result of a maritime tort; that the admiralty and maritime jurisdiction conferred by the constitution and laws of the United States is exclusive; that making an award in this matter on the ground that the accident and death are within the workmen's compensation act is in violation of Art. III, sec. 2 of the constitution of the United States, citing Great Lakes Dredge & Dock Co. v. Kierejewski, 261 U. S. 479; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149; State of Washing-

ton v. W. C. Dawson Co., 264 U. S. 219; Gonsalves v. Morse Dry Dock & Repair Co., 266 U. S. 171; 45 Sup. Ct. 39; Robbins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449; 45 Sup. Ct. 157.

It appears without dispute that the employe Strand was instantly killed. There was therefore no liability at the common law. The liability arises only by reason of the enactment of statutes giving a right of recovery in such cases. No question of maritime tort is therefore involved as that matter was understood at the common law. The Harrisburg, 119 U. S. 199. However, where state statutes give a remedy for death by wrongful act and the act is done on navigable waters, courts of admiralty will enforce the [fol. 100] liability thus created. While such a right will be enforced in courts of admiralty their jurisdiction is not exclusive and the proper party may assert the right in a state court which also has jurisdiction. American Steamboat Co. v. Chace, 16 Wall. 522: 21 Lawyers Ed. 369.

Congress legislated with reference to the general subject matter of death by wrongful act in 1920. The statute contained the following provision:

"The provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this act nor shall this act apply to the Great Lakes or to any waters within the territorial limits in any state nor to any navigable waters in the Canal Zone." 41 Stats. L., chap. 111, p. 537.

Therefore if any liability exists on account of the death by wrongful act of the employe Strand it arises under the Wisconsin statutes which give such a right (Sec. 331.03). Both the employer and the employe being under the workmen's compensation act, the liability prescribed by that act is exclusive of all others by the terms of the statute (Sec. 102.03). The Industrial commission being by the terms of the statute the sole tribunal in which proceedings to enforce liability under the statute may be brought, the commission did not act beyond or in excess of its power in entertaining the application for compensation in this case.

Bloom v. Furness-Withy & Co., 293 Fed. Rep. 98; Dobrin v. Mallory S. S. Co., 298 Fed. Rep. 349.

The judgment of the circuit court confirming the award of the industrial commission was right and must be affirmed.

By the Court: It is so ordered.

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[fol. 101] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MOTION FOR REHEARING—Filed May 23, 1927

Now come the above named plaintiffs and appellants, by Powell & Sprowls, and Lines, Spooner & Quarles, their attorneys upon the records and files herein and upon all the proceedings heretofore had herein, and upon the decision of this court rendered herein on the 3rd day of May, 1927, moves the court for a rehearing in said cause.

Dated this 12th day of May, 1927.

Powell & Sprowls, and Lines, Spooner & Quarles,
Attorneys for Appellants.

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[fol. 102] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER RETAINING RECORD—May 23, 1927

The said appellants having moved for a rehearing, it is now here ordered that the record in this cause be retained in this court until the final determination of said motion.

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[fols. 103 & 104] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER DENYING REHEARING—October 11, 1927

The Court being now sufficiently advised of and concerning the motion of the said appellants for a rehearing in this cause, it is now here ordered and adjudged by this

Court, that the said motion be, and the same is hereby. denied with $25.00 costs and costs of motion.

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[fol. 105] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

CONCURRING OPINION—Filed October 11, 1927

STEVENS, J. (concurring):

The widow of the deceased employee makes no claim against the ship on which decedent was injured nor against the owner of the ship. She is not seeking any recovery in tort. She asks only that the employer of her deceased husband pay her the death benefit which he contracted to pay when he employed the decedent.

The deceased was not employed by the owner of the ship either as a seaman or as a stevedore. Had he been injured upon the dock or upon any part of the premises belonging to his employer, the Coal & Dock Company, no question could be raised as to the right of his widow to recover the compensation which she asks.

The case presents the single question whether the fact that the deceased was temporarily at work on board a ship at the time he received the injury vests exclusive jurisdiction in admiralty, thereby ullifying his contract of employment and giving his employer the right to violate the obli- [fol. 106] gation of its contract which gave the widow the right to a death benefit.

The controlling fact in this case is that this is not an action sounding in tort. It is a proceeding to recover a death benefit fixed by contract "within a state whose positive enactment prescribed an exclusive remedy therefor. * * * And as both parties had accepted and proceeded under the statute, * * * it cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime law." Grant Smith-Porter Ship Co. v. Rhode, 257 U. S. 467, 476, 477, 66 L. ed. 321, 324.

"An award under the workmen's compensation act is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that the statute giving the commission power to make an award is read into and becomes a part of the contract. * * * The contract of employment, by virtue of the statute, contains an implied provision that the employer, if the employee be injured, will pay him a certain sum to compensate for the injuries sustained, or, if death results, a certain sum to dependents. These are made irrespective of whether or not the employer was guilty of wrongdoing. It is a part of the compensation agreed to be paid for services rendered in the course of the employment." State Industrial Commission v. Norderholt, Corp., 259 U. S. 263, 271, 66 L. ed. 933, 936.

An examination of the decisions of the federal supreme court discloses a consistent extension of the field within which that court recognizes the power of state courts to enforce rights under workmen's compensation acts in all cases where the injured employee was neither a seaman nor a stevedore, even if the injuries were sustained upon [fol. 107] navigable waters. Two recent decisions of the federal supreme court illustrate this tendency. Grant Smith-Porter Co. v. Rhode, 257 U. S. 469, 478, 66 L. ed. 321, 325. Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 64-5, 70 L. ed. 470, 472. In the case last cited it is said: "In the cause under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state compensation act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribed the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist." Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 64; 70 L. ed. 470, 472.

The fact that deceased sustained an injury on board ship does not give admiralty exclusive jurisdiction. A consideration of the two cases last cited demonstrates very clearly that the federal supreme court does not consider the location of the maritime tort causing the injury as the con-

trolling factor in cases which involve the rights of parties under a contract of employment made with reference to a state workmen's compensation act. Deceased spent only about two per cent of his entire working time in performing service for his employer on board ship. If the fact that an employee is injured on ship board gives admiralty exclusive jurisdiction, then the rule must be applied without regard to the nature of the contract of employment or the percentage of time devoted to the performance of service on board ship. If admiralty has exclusive jurisdic-[fol. 108] tion of the remedy for the death of one injured on board ship who is employed on the ship but two per cent of his time, it must also have exclusive jurisdiction where an employee is injured on ship board who spends but one per cent of his time on the ship or where he spends practically none of his time on ship board as, for example, a delivery boy who is injured on board ship during the short space of time essential to secure on this ship a single package of freight consigned to his employer. The cases holding that admiralty jurisdiction in tort matters depends upon the locality of the tort are all cases where the injured man was employed to devote his time to the work of either a seaman or a stevedore. This rule does not extend to cases in which one employed on land is injured on ship board while performing some service incidental to his employment upon land.

It is the necessity for preserving uniformity and harmony in the administration of the maritime law that is the basis for holding that the federal courts have exclusive jurisdiction of all proceedings in admiralty. The leading case supporting the rule for which appellant contends is Southern Pacific v. Jensen, 244 U. S. 205, 217, 61 L. ed. 1086, 1099. What is there said must be read in the light of the fact that the law there under consideration subjected the owners of ocean going vessels of other states who employed seamen and stevedores to move the ship's cargo to the obligations imposed by the New York workmen's compensation act. Very clearly any act which attempts to subject either ships or ship owners to the provisions of state compensation acts would interfere with uniformity and harmony in the administration of admiralty and maritime laws, because the ship might be subject to a different law in every port at which it landed.

[fol. 109] But here the contract of employment and the rights and liabilities of the parties under that contract are clearly matters of purely local concern, whose regulation by the state will in no way interfere with ships or ship owners nor prejudice any of the material characteristics of the general maritime law.

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[fol. 110] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 111] [Endorsed:] State of Wisconsin, In Supreme Court, Northern Coal & Dock Company, a corporation, and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, vs. Emma Strand and Industrial Commission of Wisconsin. Transcript of Record.

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Endorsed on cover: File No. —. Wisconsin Supreme Court. Term No. —. Northern Coal & Dock Company and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Petitioners, Emma Strand and Industrial Commission of Wisconsin. Filed ——, 19—. File No. —.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 27, 1928

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(10000)

FILE COPY

FILED
JAN 5 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1927.

No. 685 41

NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN AND BRIEF IN SUPPORT THEREOF.

LOUIS QUARLES,
CHAS. B. QUARLES,
LYMAN T. POWELL and
JOHN S. SPROWLS,
*Attorneys for Petitioners.*

SUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

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No. .....

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NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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*To the Honorable, The Supreme Court of the United States:*

Your petitioners, Northern Coal & Dock Company, a corporation organized under the laws of Ohio and licensed to do business in Wisconsin, and General Acci-

dent, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, a foreign corporation licensed to do business as such in the State of Wisconsin, in support of this petition for writ of certiorari to be directed to the Supreme Court of the State of Wisconsin respectfully show:

That your petitioner, Northern Coal & Dock Company, is engaged in the business of mining, distributing and selling coal, and operates a coal dock on Lake Superior at the City of Superior, State of Wisconsin;

That on October 20, 1924, one Charles Strand was working as an employee of the Northern Coal & Dock Company in the hold of a steamer which was then lying at said dock in the navigable waters of Lake Superior, and that while so working as a stevedore in unloading said boat said Strand was instantly killed;

That the respondent, Emma Strand, is the widow of the deceased, Charles Strand; that said Emma Strand filed an application with the Industrial Commission of Wisconsin asking for death benefits under the Workmen's Compensation Act of Wisconsin, naming as respondents in said proceeding your petitioner, Northern Coal & Dock Company, and your petitioner, General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland;

That your petitioner, General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, had written a policy of workmen's compensation insurance for Northern Coal & Dock Company, under which it was liable to respond for the amount of the compensation, if any should be assessed against its assured;

That your petitioners contested said proceeding before the Industrial Commission on the ground that the said Industrial Commission had no jurisdiction of the proceeding for the reason that the death of said Charles

Strand was the result of a maritime accident, that the admiralty and maritime jurisdiction conferred by the Constitution and Laws of the United States upon the District Courts of the United States in such cases is exclusive, and that such jurisdiction is retained by the Federal Courts by Article III, Section 2, of the Constitution of the United States;

That notwithstanding the answer of your petitioners so interposed and the objection to the jurisdiction of said Industrial Commission, as heretofore stated, said Industrial Commission did make and enter an award in favor of the said Emma Strand and against your petitioners in a sum exceeding fifty-eight hundred dollars ($5800);

That pursuant to the statutes in the State of Wisconsin your petitioners brought an action in the Circuit Court of Dane County, Wisconsin, for the purpose of reviewing and setting aside the said award and that your petitioners did allege among other things in their complaint in said action that the said Industrial Commission of Wisconsin had and has no jurisdiction of the controversy or the claim in question for the reason that the death of said Charles Strand was the result of a maritime accident, that the admiralty and maritime jurisdiction conferred by the Constitution and Laws of the United States upon the District Courts of the United States in such cases is exclusive, that such jurisdiction is retained by the Federal Courts by Article III, Section 2, of the Constitution of the United States, and that the making of the said alleged findings of fact and award herein were in violation of said Article III, Section 2, of the Constitution of the United States;

That the said Emma Strand and said Industrial Commission of Wisconsin did duly answer the said complaint and that thereafter the said action so started in the Cir-

cuit Court of Dane County, Wisconsin, came on for trial, and that after the trial thereof the said award of the Industrial Commission of Wisconsin was affirmed by a judgment of the said Circuit Court of Dane County; that thereafter your petitioners duly appealed from said judgment to the Supreme Court of the State of Wisconsin and did by their briefs and oral argument make the same contentions as are hereinbefore set forth;

That on the 3rd day of May, 1927, the Supreme Court of the State of Wisconsin filed its decision in said action, now reported in 213 Northwestern 658, wherein it did affirm the said judgment of the Circuit Court of Dane County;

That thereafter your petitioners duly filed a motion for rehearing of said decision and did duly file briefs thereon and that on the 11th day of October, 1927, the Supreme Court of the State of Wisconsin did deny said motion for rehearing with costs; that at said time Mr. Justice Stevens, one of the members of said Supreme Court, did file a concurring opinion.

## Grounds Upon Which the Supreme Court Is Asked to Take Jurisdiction.

1. That the Industrial Commission of Wisconsin, the Circuit Court of Dane County, and the Supreme Court of the State of Wisconsin in deciding this case have erroneously assumed that this action is not controlled by Article III, Section 2, of the Constitution of the United States;

2. That the decision of the Supreme Court of the State of Wisconsin in this case is in direct conflict with the decision of the Supreme Court of the United States in the case of *International Stevedoring Company* v.

*Haverty*, 47 Sup. Ct. Rept. 19, holding that a man working as a stevedore is a seaman as the word is used in the Jones Act (Act of June 5, 1920), 41 Stat. L. 1007; is in direct conflict with the decision of the Supreme Court of the United States in the case of *Western Fuel Company* v. *Garcia*, 257 U. S. 233, holding that the widow of a stevedore who was instantly killed while working in the hold of a vessel, was rightly refused recovery under the California Workmen's Compensation Act, but was entitled to bring a libel *in personam* in the United States District Court; and is in direct conflict with other decisions of the Supreme Court of the United States holding that the compensation acts of the various states have no application to maritime accidents occurring to persons working as stevedores, to wit: *Southern Pacific Company* v. *Jensen*, 244 U. S. 205, *Great Lakes Dredge & Dock Co.* v. *Kierejewski*, 261 U. S. 479, *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, *State of Washington* v. *W. C. Dawson Co.* 264 U. S. 219, *Gonsalves* v. *Morse Dry Dock & Repair Co.* 266 U. S. 171;

3. That the decision below if allowed to stand will deprive your petitioners of a large amount of money, for which they are not liable under the Laws of the United States and for which they are not liable under the Laws of the State of Wisconsin;

4. That the decision below if allowed to stand will be followed by the Supreme Court of Wisconsin as a precedent for other erroneous decisions in cases arising under similar circumstances;

That petitioners file herewith a certified transcript of the record below, as required by the rules of this court, and they have herein presented the reasons why the judgment of the Supreme Court of the State of Wisconsin should be brought here for review by the Supreme Court.

WHEREFORE, in view of the premises petitioners pray that this Honorable Court will grant its writ of certiorari directed to the Supreme Court of the State of Wisconsin requiring that the record of said cause in said court and its decree be certified to this court, and that this Honorable Court will correct the errors complained of, reverse the said decree, and remand said cause, and give unto your petitioners such other and further relief as the nature of the case requires, and to the court may seem proper.

NORTHERN COAL & DOCK COMPANY and
GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LDT., OF PERTH, SCOTLAND,
By LOUIS QUARLES,
of Milwaukee, Wisconsin, and
LYMAN T. POWELL and JOHN S. SPROWLS, of Superior, Wisconsin,
*Attorneys for Petitioners.*

STATE OF WISCONSIN, }
COUNTY OF MILWAUKEE. } ss.

LOUIS QUARLES, being first duly sworn, states that he is a member of counsel for Northern Coal & Dock Company and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, petitioners herein and regularly admitted to practice in the United States Supreme Court; that he has prepared the foregoing petition; that the allegations thereof are true, as he verily believes, and that he believes said petition is proper to be filed, and that the same is not introduced for purposes of delay.

LOUIS QUARLES

Subscribed and sworn to before me this 8th day of November, 1927.

G. S. SALENTINE
*Notary Public, Wisconsin.*

My commission expires June 17, 1928.

STATE OF WISCONSIN, } ss.
COUNTY OF DOUGLAS. }

LYMAN T. POWELL and JOHN S. SPROWLS, being first duly sworn, state that they are members of counsel for Northern Coal & Dock Company and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, petitioners herein and regularly admitted to practice in the United States Supreme Court; that they have prepared the foregoing petition; that the allegations thereof are true, as they verily believe, and that they believe said petition is proper to be filed, and that the same is not introduced for purposes of delay.

LYMAN T. POWELL
JOHN S. SPROWLS

Subscribed and sworn to before me this 4 day of November, 1927.

HENRY B. EVANS
*Notary Public, Wisconsin.*

My commission expires Feb. 15, 1931.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

No. .....

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NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

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## BRIEF AND ARGUMENT.

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The facts in this case are not in dispute. Deceased came to his death through an accident while working in the hold of a vessel on the navigable waters of Lake Superior. He was an employee of the Northern Coal & Dock Company, which was not the owner of the boat. He and his employer were subject to the Workmen's Compensation Act of Wisconsin if that act applied to maritime accidents.

This court has frequently reviewed decisions of the Supreme Courts of the several states where those courts erroneously applied the local workmen's compensation acts and in each such case has reversed the local court for the reason that Article III, Section 2, of the Consti-

tution of the United States does not permit the states to change, modify, or affect the general maritime law. To apply the Workmen's Compensation Act to such a case would clearly work material prejudice to the characteristic features of the general maritime law and would interfere with the proper harmony and uniformity of that law.

The decision of the Wisconsin Supreme Court, which we now seek to review, cites many decisions of the United States Supreme Court which we rely on in support of our contention, but states that as Strand was instantly killed and there was therefore no liability at common law, "no question of maritime tort is therefore involved as that matter was understod at common law."

The court then states that where state statutes give a remedy for death by wrongful act and the act is done on navigable waters, courts of admiralty will enforce the liability thus created. The Wisconsin court then states:

> "Congress legislated with reference to the general subject matter of death by wrongful act in 1920. The statute contained the following provision:
>
> 'The provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this act nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any state, or to any navigable waters in the Panama Canal zone.' 41 Stats. L. c. 111, p. 537 (U. S. Comp. St. sec. 1251½-f.)
>
> Therefore, if any liability exists on account of the death by wrongful act of the employee, Strand, it arises under the Wisconsin Statutes, which give such a right. Section 331.03."

The Wisconsin court clearly fell into error in misconstruing the purpose and application of the Act of March 30, 1920. Long prior to the adoption of this act the Supreme Court of the United States held that death actions could be maintained under the state statutes. The sole

purpose of the Act of March 30th was to create a cause of action in death actions happening on the high seas where the local statutes were not applicable. The Jones Act of June 5, 1920, was adopted subsequently to that of March 30, 1920, and creates a cause of action for the benefit of seamen. There is nothing in the March act which in any way permits a seaman to prosecute his action under the local statutes or to recover compensation under local statutes. This court has definitely determined that a stevedore is a seaman within the meaning of the Jones Act. *International Stevedoring Co.* v. *Haverty*, 47 Sup. Ct. Rept. 19.

It cannot be questioned that the widow of the deceased in this case could prosecute a cause of action under the Jones Act. Nothing is better established than the fact that where Congress has legislated relative to maritime torts that legislation must be considered as the uniform law and that a person cannot at his election proceed under the uniform maritime law or under a local compensation act.

The exact question here involved was decided in *Western Fuel Co.* v. *Garcia*, 257 U. S. 233. In that case the deceased was instantly killed while employed as a stevedore and working in the hold of a vessel. Recovery was refused under the California Workmen's Compensation Act and this court then sustained the right of the widow to bring a libel *in personam* in the United States District Court. In that case the Supreme Court discusess *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, *Chelentis* v. *Luckenbach Steamship Co.* 247 U. S. 372, *Union Fish Company* v. *Erickson*, 248 U. S. 308, and *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, in which this court pointed out the inability of the states to change the general features of the maritime law so as to defeat uniformity, but

affirmed the power of the states to take some modifications or supplements thereto.

It seems clear to us from a reading of the decisions of this court that this court has uniformly acknowledged the right of the states to supplement the maritime law by adding thereto the right to sue for wrongful death, at the same time adhering to the rule of uniformity by not conceding the right to make local compensation acts applicable to maritime torts.

Under the Jones Act (June 5, 1920) there can be no question about the rule, as Congress has now legislated on the subject, thus precluding the right of the states to adopt contrary legislation.

Following your petitioners' motion for a rehearing Mr. Justice Stevens of the Supreme Court of Wisconsin filed a concurring opinion (R. .....) in which he expresses the opinion that the right of the widow does not grow out of an action sounding in tort, but arises out of a contract made between the employer and employee under the Workmen's Compensation Act. He concludes that the deceased was not a stevedore and states that the decisions of this court recognize the power of state courts to enforce rights under Workmen's Compensation Acts in all cases where the injured employee was neither a seaman nor a stevedore if the injuries were received upon navigable waters, citing *Grant Smith-Porter Ship Company* v. *Rohde*, 257 U. S. 469, and *Millers' Indemnity Underwriters* v. *Braud*, 270 U. S. 59.

In the Grant Smith-Porter Ship Company case the injured man was working on an incompleted vessel and this court held that he was not doing maritime work at the time.

In the Millers' Indemnity Underwriters case the injury occurred to a diver who was cutting off piles in a river

and this court held that to bring such work under the compensation act of a state did not materially affect the general maritime law. This court said:

> "The matter is of mere local concern and its regulation by the state will work no material prejudice to the characteristic feature of the maritime law."

We submit that Mr. Justice Stevens misconstrued the decisions of this court and overlooked the fact that the deceased clearly was a stevedore and was doing maritime work at the time of his injury. The test as to whether or not he was a stevedore does not depend upon the general nature of his employment, but depends upon the kind of work he was doing at the time of his injury. The admiralty jurisdiction in tort matters depends upon locality.

*Waring, et al.* v. *Clarke,* 5 How. 441, 459; 12 L. Ed. 226.

*R. R. Co.* v. *Towboat Co.* 23 How. 209, 215; 16 L. Ed. 433.

*The Propeller Commerce,* 1 Black, 574, 579; 17 L. Ed. 107.

*The Plymouth,* 3 Wall. 20, 33; 18 L. Ed. 125.

*Leathers* v. *Blessing,* 105 U. S. 626, 630; 26 L. Ed. 1192.

*Martin* v. *West,* 222 U. S. 191, 197; 32 Sup. Ct. 42; 56 L. Ed. 159; 36 L. R. A. (N. S.) 592.

*Gonsalves* v. *Morse Dry Dock & Repair Co.* 45 Sup. Ct. 39; 266 U. S. 171; 69 L. Ed. 228.

*Robins Dry Dock & Repair Co.* v. *Dahl,* 45 Sup. Ct. 157; 266 U. S. 449, 457; 69 L. Ed. 372.

We submit further that the employment contract between the Northern Coal and Dock Company and Strand did not imply an agreement to pay compensation for maritime accidents, nor an agreement by Strand or his widow to waive any right to sue under the maritime law.

As the compensation act can have no application to maritime accidents, it cannot properly be said that the parties to the contract of employment either expressly or impliedly agreed to change or extend the compensation act.

It may be said that as a part of the contract of employment the Northern Coal & Dock Company agreed to pay compensation if the employee should be injured under such circumstances as would make the compensation act apply, but it cannot be said that there was any agreement to pay compensation under any other circumstances.

In other words, the Constitution and laws of the United States are just as much a part of a contract of employment as are the laws of a state.

We respectfully submit that this case is controlled by *Southern Pacific Co.* v. *Jensen*, 244 U. S. 203, in which case this court held that the Workmen's Compensation Commission of New York had no jurisdiction to make an award in favor of the dependents of a man who was engaged in unloading a steamship because the man was injured while he was on the vessel.

Respectfully submitted,

LOUIS QUARLES,
CHAS. B. QUARLES,
LYMAN T. POWELL, and
JOHN S. SPROWLS,
*Attorneys for Petitioners.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

No. [redacted] 685 41

NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,
*Petitioners,*

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN,
*Respondents.*

CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

## BRIEF OF PETITIONERS.

LOUIS QUARLES,
CHAS. B. QUARLES,
LYMAN T. POWELL, and
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BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

No. 658.

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NORTHERN COAL & DOCK COMPANY AND GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND AND INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

---

CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

## BRIEF OF PETITIONERS.

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### OPINIONS BELOW.

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This case comes to this court on a writ of certiorari to the Supreme Court of the State of Wisconsin.

The decision of the Supreme Court of Wisconsin is *Northern Coal & Dock Company* v. *Industrial Commission,* 193 Wis. 515, 213 N. W. 658.

### JURISDICTION.

Jurisdiction is conferred by Article III, Section 2, of the Constitution of the United States. The decision to be reviewed was filed May 3, 1927. A rehearing was de-

nied October 11, 1927. (Rec., 55, 58, and 59.) Jurisdiction is based on the fact that the Industrial Commission of the State of Wisconsin, the Circuit Court of Dane County, Wisconsin, and the Supreme Court of the State of Wisconsin have erroneously held in this case that the Industrial Commission had power to make an award in favor of the widow of a deceased employee when the employee was killed while working as a stevedore on the navigable waters of Lake Superior. Jurisdiction has been sustained in *Southern Pacific Company* v. *Jensen*, 244 U. S. 205; *Great Lakes Dredge & Dock Co.* v. *Kierejewski*, 261 U. S. 479; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *State of Washington* v. *W. C. Dawson Co.* 264 U. S. 219; *Gonsalves* v. *Morse Dry Dock & Repair Co.* 266 U. S. 171.

## Statement of Facts.

As stated on page 1 in the brief filed by respondents' counsel in opposition to the petition for writ of certiorari, the facts in this case are not in dispute. They may briefly be summarized as follows:

On October 20, 1924, one Charles Strand was instantly killed while working in the hold of a vessel docked at the property of the respondent, Northern Coal & Dock Company, on Superior Bay, a navigable portion of Lake Superior, at Superior, Wisconsin. Strand was an employee of the Northern Coal & Dock Company, whose business was the mining, handling, and selling of coal at wholesale. The company does not own any boats of its own. (Rec., 31-32.) From time to time the Northern Coal & Dock Company (hereinafter for convenience referred to as the employer) had occasion to unload coal from vessels at its dock. On such occasions Strand and other employees would be pressed into that service.

That was the work he was doing at the time of the accident which resulted in his instantaneous death. The deceased and his employer were subject to the Workmen's Compensation Act of Wisconsin so far as that law is applicable. The only question involved now is whether that act is applicable to such a maritime accident as occurred in this case.

After the death of Charles Strand his widow, Emma Strand, filed an application with the Industrial Commission of the State of Wisconsin, in which she asked for compensation from the employer and the insurance company carrying the compensation risk. This application was opposed, but an award was made in favor of the widow granting her death benefits in the sum of $4,653.56 and $200 burial expenses. (Rec., 7.)

The employer and insurance carrier brought an action pursuant to the statutes of the State of Wisconsin to review this award. This resulted in a judgment affirming the award. (Rec., 50.)

The employer and insurance carrier thereupon appealed from said judgment to the Supreme Court of the State of Wisconsin on the ground that the Industrial Commission had no jurisdiction to make the award for the reason that the case was controlled by the admiralty law and by Article III, Section 2, of the Constitution of the United States. The judgment was affirmed and is now here for review. The opinion appears on Record page 55 and the court's opinion filed after motion for rehearing appears on Record page 59.

## Errors.

The Supreme Court of Wisconsin erred in not reversing the judgment of the Circuit Court of Dane County.

## ARGUMENT.

It is well established by decisions of this court that the states have no power to change, modify, or affect the general maritime law. To apply the Workmen's Compensation Act of Wisconsin to this case would clearly work material prejudice to the characteristic features of the general maritime law and would interfere with the proper harmony and uniformity of that law. The decision of the Wisconsin Supreme Court, which is here for review (Rec., 55) cites the following cases which were relied on by appellants in that case and which we rely on here, to wit:

*Great Lakes Dredge & Dock Co.* v. *Kierejewski*, 261 U. S. 479.

*Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149.

*State of Washington* v. *W. C. Dawson Co.* 264 U. S. 219.

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*Robins Dry Dock & Repair Co.* v. *Dahl*, 45 Sup. Ct. 157; 266 U. S. 449, 457; 69 L. Ed. 372.

but concludes that as Strand was instantly killed there was no liability at common law, and that "no question of maritime tort is therefore involved as that matter was understood at common law."

The court then states that where state statutes give a remedy for death by wrongful act and the act is done on navigable waters, courts of admiralty will enforce the liability thus created. The Wisconsin court then states:

> "Congress legislated with reference to the general subject matter of death by wrongful act in 1920. The statute contained the following provision: 'The provisions of any state statute giving or

regulating rights of action or remedies for death shall not be affected by this act nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any state, or to any navigable waters in the Panama Canal zone.' 41 Stats. L. c. 111, p. 537 (U. S. Comp. St. sec. 1251½-f.)

Therefore, if any liability exists on account of the death by wrongful act of the employee, Strand, it arises under the Wisconsin Statutes, which give such a right. Section 331.03."

The Wisconsin court clearly fell into error in misconstruing the purpose and application of the Act of March 30, 1920. Long prior to the adoption of this act the Supreme Court of the United States held that death actions could be maintained under the state statutes. The sole purpose of the Act of March 30th was to create a cause of action in death actions happening on the high seas where the local statutes were not applicable. The Jones Act of June 5, 1920, was adopted subsequently to that of March 30, 1920, and creates a cause of action for the benefit of seamen. There is nothing in the March act which in any way permits a seaman to prosecute his action under the local statutes or to recover compensation under local statutes. This court has definitely determined that a stevedore is a seaman within the meaning of the Jones Act. *International Stevedoring Co.* v. *Haverty,* 47 Sup. Ct. Rept. 19.

It cannot be questioned that the widow of the deceased in this case could prosecute a cause of action under the Jones Act. Nothing is better established than the fact that where Congress has legislated relative to maritime torts that legislation must be considered as the uniform law and that a person cannot at his election proceed under the uniform maritime law or under a local compensation act.

The exact question here involved was decided in *West-*

*ern Fuel Co.* v. *Garcia,* 257 U. S. 233. In that case the deceased was instantly killed while employed as a stevedore and working in the hold of a vessel. Recovery was refused under the California Workmen's Compensation Act and this court then sustained the right of the widow to bring a libel *in personam* in the United States District Court. In that case the Supreme Court discusses *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, *Chelentis* v. *Luckenbach Steamship Co.* 247 U. S. 372, *Union Fish Company* v. *Erickson,* 248 U. S. 308, and *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149, in which this court pointed out the inability of the states to change the general features of the maritime law so as to defeat uniformity, but affirmed the power of the states to make some modifications or supplements thereto.

It seems clear to us from a reading of the decisions of this court that this court has uniformly acknowledged the right of the states to supplement the maritime law by adding thereto the right to sue for wrongful death, at the same time adhering to the rule of uniformity by not conceding the right to make local compensation acts applicable to maritime torts.

Under the Jones Act (June 5, 1920) there can be no question about the rule, as Congress has now legislated on the subject, thus precluding the right of the states to adopt contrary legislation.

Following the motion for a rehearing Mr. Justice Stevens of the Supreme Court of Wisconsin filed a concurring opinion (Rec., 59) in which he expresses the opinion that the right of the widow does not grow out of an action sounding in tort, but arises out of a contract made between the employer and employee under the Workmen's Compensation Act. He concludes that the deceased was not a stevedore and states that the deci-

sions of this court recognize the power of state courts to enforce rights under Workmen's Compensation Acts in all cases where the injured employee was neither a seaman nor a stevedore if the injuries were received upon navigable waters, citing *Grant Smith-Porter Ship Company* v. *Rohde*, 257 U. S. 469, and *Millers' Indemnity Underwriters* v. *Braud*, 270 U. S. 59.

In the Grant Smith-Porter Ship Company case the injured man was working on an incompleted vessel and this court held that he was not doing maritime work at the time.

In the Millers' Indemnity Underwriters case the injury occurred to a diver who was cutting off piles in a river and this court held that to bring such work under the compensation act of a state did not materially affect the general maritime law. This court said:

> "The matter is of mere local concern and its regulation by the state will work no material prejudice to the characteristic feature of the maritime law."

We submit that Mr. Justice Stevens misconstrued the decisions of this court and overlooked the fact that the deceased clearly was a stevedore and was doing maritime work at the time of his injury. The test as to whether or not he was a stevedore does not depend upon the general nature of his employment, but depends upon the kind of work he was doing at the time of his injury. The admiralty jurisdiction in tort matters depends upon locality.

*Waring, et al.* v. *Clarke*, 5 How. 441, 459; 12 L. Ed. 226.

*R. R. Co.* v. *Towboat Co.* 23 How. 209, 215; 16 L. Ed. 433.

*The Propeller Commerce*, 1 Black 574, 579; 17 L. Ed. 107.

*The Plymouth*, 3 Wall. 20, 33; 18 L. Ed. 125.

*Leathers* v. *Blessing*, 105 U. S. 626, 630; 26 L. Ed. 1192.

*Martin* v. *West*, 222 U. S. 191, 197; 32 Sup. Ct. 42; 56 L. Ed. 159, 36 L. R. A. (N. S.) 592.

*Gonsalves* v. *Morse Dry Dock & Repair Co.* 45 Sup. Ct. 39; 266 U. S. 171; 69 L. Ed. 228.

*Robins Dry Dock & Repair Co.* v. *Dahl*, 45 Sup. Ct. 157; 266 U. S. 449, 457; 69 L. Ed. 372.

That we are correct in our contention is shown by a recent decision of this court, to wit: *T. Smith & Son, Inc.* v. *Fannie Robinson Taylor*, decided February 20, 1928, No. 7 Advanced Opinions, page 273. In that case Mr. Justice Butler said:

> "Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated section 2 of art. 3. But, if the cause of action arose upon the land, the state law is applicable."

We submit further that the employment contract between the Northern Coal and Dock Company and Strand did not imply an agreement to pay compensation for maritime accidents, nor an agreement by Strand or his widow to waive any right to sue under the maritime law.

As the compensation act can have no application to maritime accidents, it cannot properly be said that the parties to the contract of employment either expressly or impliedly agreed to change or extend the compensation act.

It may be said that as a part of the contract of employment the Northern Coal & Dock Company agreed to pay compensation if the employee should be injured under such circumstances as would make the compensation

act apply, but it cannot be said that there was any agreement to pay compensation under any other circumstances.

In other words, the Constitution and laws of the United States are just as much a part of a contract of employment as are the laws of a state.

We respectfully submit that this case is controlled by *Southern Pacific Co.* v. *Jensen*, 244 U. S. 203, in which case this court held that the Workmen's Compensation Commission of New York had no jurisdiction to make an award in favor of the dependents of a man who was engaged in unloading a steamship because the man was injured while he was on the vessel.

Respectfully submitted,

LOUIS QUARLES,
CHAS. B. QUARLES,
LYMAN T. POWELL, and
JOHN S. SPROWLS,
*Attorneys for Petitioners.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

No. ~~683~~ 41

NORTHERN COAL & DOCK COMPANY and GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND and INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

## BRIEF OF RESPONDENT, EMMA STRAND, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN A CADIGAN
PETER B. CADIGAN
ANDREW NELSON

*Attorneys for Respondent, Emma Strand.*

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not own or charter any vessels or railroad lines (R. pp. 31, 32). Both the deceased and his employer were subject to the Workmen's Compensation Act of Wisconsin if that act is applicable to the facts.

During the year 1924, deceased, up to the time of his death, although steadily employed, worked only about 117 hours on 31 boats, during which 117 hours he cleaned up coal with others in the holds of boats so that the coal could be taken out by machinery. He was carried on the payroll of the respondent coal and dock company as a car-loader-man, and by far the greater majority of his work was on land about the dock of his employer (R. pp. 31, 32, 33, 34, 35).

The grounds upon which the Supreme Court is asked to take jurisdiction are principally:

1. That at the time of his death, the deceased was a stevedore, and consequently the respondent's (Emma Strand's) cause of action must be brought under the provisions of the Jones Act (Act of Congress, June 5, 1920, 41 Stats. L. 1007).

2. That respondent's cause of action, if any, is controlled by Article III, of Section 2, of the Constitution of the United States.

3. That the Workmen's Compensation Act of Wisconsin (Chap. 102, Wisconsin Stats. 1925) is not applicable.

4. That the decision of the Supreme Court of Wisconsin in the instant case is in direct conflict with the decisions of the Supreme Court of the United States, among which decisions the following cases are specifically relied upon:

*International Stevedoring Company v. Haverty*, 47 Sup. Ct. Rept. 19; *Western Fuel Company v. Garcia*, 257 U. S. 233; *Southern Pacific Company v. Jensen*, 244 U. S. 205.

It is further claimed that to apply the provisions of the Wisconsin Workmen's Compensation Act to the instant case would clearly work material prejudice to the characteristic features of the general maritime law, and would interfere with the proper harmony and uniformity of that law.

The majority opinion of the Supreme Court of Wisconsin

(R. p. 55) in the instant case is based squarely upon the facts that the Act of Congress of March 30, 1920, which legislated with reference to the general subject matter of death on the high seas by wrongful act, contained the following provisions:

> "The provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this act nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any state. * * * (41 Stats. L. c. 111, p. 537, Sec. 1251½-f);"

and that since Strand was instantly killed, there was no liability at common law, such liability, if any, existing only on account of death by wrongful act of the employer under the provisions of Section 331.03, Wisconsin Statutes, which section is more fully set out as follows:

> "331.03 RECOVERY FOR DEATH BY WRONGFUL ACT.
>
> "Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided that such action shall be brought for a death caused in this state."

Section 331.03 of Wisconsin Statutes being abrogated as between employer and employe by the terms of section 102.03, Chap. 102, Wisconsin Statutes 1925, which follows:

> "102.02 (3) * * * And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of Section 102.03 to 102.34 inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death. .. .. "

the Supreme Court of Wisconsin further held that the Industrial Commission of Wisconsin, being by the terms of the statute, the sole tribunal in which proceedings to enforce liability under the Wisconsin Death Statute may be brought, the Wisconsin Compensation Act was applicable, and the Wisconsin Industrial Commission had jurisdiction to award compensation in this case, no question of maritime tort being involved as that matter was understood at common law.

*The Harrisburg,* 119 U. S. 199.
*Bloom v. Furness-Withy & Co.,* 293 Fed. Rep. 98.
*Dobrin v. Mallory S. S. Co.,* 298 Fed. Rep. 349.
*Western Fuel Co. v. Garcia,* 257 U. S. 233.

We submit that the Wisconsin Supreme Court is not in error, but that its decision in this case is right, and that the decision of the Supreme Court of the United States in *Western Fuel Company v. Garcia,* 257 U. S. 233 supports our contention. The opinion in the latter case does not show why the Supreme Court of California annulled an award of the Industrial Accident Commission of that state, and is authority for the proposition contended for by the Supreme Court of Wisconsin that no suit to recover damages for the wrongful death of a person may be maintained in the admiralty courts of the United States under the general maritime law. As far as we are able to ascertain from the opinion, the court held that the United States Courts might enforce the provisions of a state statute creating liability for wrongful death by an action *in personam.* The opinion is dark as to whether or not the provisions of the California Workmen's Compensation Act specifically abrogated the provisions of the California wrongful death statute as is the case in Wisconsin.

The proceedings in the instant case were commenced by respondent, Emma Strand, widow of deceased, August 10, 1925, by the filing of an application for adjustment of claim with the Industrial Commission of Wisconsin (R. p. 13). The opinion of this court in the case of *International Stevedoring Co. v. Haverty,* 47 Sup. Ct. Rept. 19, was not handed down until October 18, 1926, so respondent did not have the benefit of the interpretation of the provisions of the Jones Act (Act of June 5, 1920, C. 250, Sec. 20, 41 Stat. 988) giving "seamen" the right of action for personal

injuries under the provisions of the Federal Employers Liability Act relating to railway employes. In the *Haverty* case, this court extended the meaning of the word "seamen" to include a longshoreman, engaged in stowing freight in the hold of a boat who was injured. There was a specific finding that the employe therein involved was a longshoreman or stevedore. He was an employe of a Stevedore Company, whose business was to unload boats and thus perform a maritime service formerly rendered by the ship's crew.

We do not believe that this case has any application here as the deceased was not in any sense a stevedore or longshoreman, but was an employe of a company whose business was the mining, marketing and selling of coal at wholesale. The record shows that the unloading of boats and the casual work of the deceased on the same was but incidental to the main business of the company. We do not believe that the doctrine laid down in the *Haverty* case can be extended to the one at bar so as to make a stevedore out of the deceased for the purpose of depriving the courts of Wisconsin of jurisdiction in the case.

The petitioners have failed to point out in what manner the application of the local compensation act to the facts involved in the instant case will interfere with the desirable rule of uniformity of the characteristic features of the general maritime law. No claim has been asserted in the instant case that would in any way interfere with such uniformity. The claim here is made against a company whose business is mining, handling and selling of coal; a company which owns, operates or charters no vessels, or railways, and a company that is not engaged in the stevedore business. If the boat in which deceased was killed was owned by the petitioner, Northern Coal & Dock Company, the situation would be entirely different, and we would be confronted with that raised in the case of *Southern Pacific Company v. Jensen,* 244 U. S. 205, where the deceased was killed on a steamship owned by his employer, the Southern Pacific Company. The work being done in that case by deceased was clearly the work of a stevedore engaged in fulfilling a maritime contract, and the injuries from which he died were likewise maritime. The application of the provisions of the Workmen's Compensation Act of New York to the facts in the *Jensen* case would destroy the uniformity in

respect to maritime matters which the Constitution was designed to establish.

We do not agree, as contended by petitioners, that admiralty jurisdiction in tort matters depends upon locality, and point to the decision of this court in *Millers' Indemnity Underwriters v. Braud*, 270 U. S. 59. The locality of the tort in that case (a diver who was drowned while cutting off piles in a navigable river), was certainly maritime, but this court held that the Workmen's Compensation Law of Texas applied, on the ground that the matter was of mere local concern, and its regulation by the state would work no material prejudice to the characteristic features of the maritime law.

In view of the latter decision, we believe the reasoning therein fits the facts in the instant case like a glove.

WHEREFORE, by reason of the foregoing, the respondent, Emma Strand, submits that the decision of the Supreme Court of Wisconsin in the instant case is right, and that the Industrial Commission of Wisconsin had jurisdiction to make the award complained of, and that the petition for Writ of Certiorari filed herein by petitioners must be denied.

Respectfully submitted,

JOHN A CADIGAN
PETER B. CADIGAN
ANDREW NELSON

*Attorneys for Respondent, Emma Strand.*

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IN THE

# Supreme Court of the United States

October Term, 1927

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No. ~~685~~ 41

NORTHERN COAL & DOCK COMPANY and GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND, and INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

*Certiorari to the Supreme Court of the State of Wisconsin.*

## BRIEF OF RESPONDENT, EMMA STRAND

JOHN A. CADIGAN
PETER B. CADIGAN
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*Attorneys for Respondent, Emma Strand*

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IN THE

# Supreme Court of the United States

October Term, 1927

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No. 685

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NORTHERN COAL & DOCK COMPANY and GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*vs.*

EMMA STRAND, and INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

---

*Certiorari to the Supreme Court of the State of Wisconsin.*

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## BRIEF OF RESPONDENT, EMMA STRAND.

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This case is before this court on Writ of Certiorari issued to the Supreme Court of the State of Wisconsin, to reverse the decision of that court as found in Northern Coal & Dock Company vs. Industrial Commission, 193, Wis. 515; 213 N. W. 658 (Rec. 55).

It is claimed by petitioners that jurisdiction is conferred by Article III, Section 2, of the Constitution of the United States, extending exclusively the Federal judicial power to all cases of admiralty and martime jurisdiction. It is claimed by petitioners that the decision of the Supreme Court of Wisconsin which, in turn, affirmed the decision of the Circuit Court of Dane

County, Wisconsin, holding that in this case the Industrial Commission of Wisconsin had power to make an award in favor of respondent, the widow of the employee, who was killed while working in the hold of a vessel in navigable waters on Lake Superior, is in error.

## STATEMENT OF FACTS

The facts in this case are not in dispute, but we deem the statement of fact set forth in petitioners' brief inadequate and incomplete fairly to represent the question involved in the case.

The respondent, Northern Coal & Dock Company, had its principal office at Cleveland, Ohio, and at the time of the death of deceased, was engaged in mining, handling and selling coal at wholesale. The company does not own any vessels or railroad lines. It maintains a dock situated on Superior Bay, in the city of Superior, which bay is a navigable portion of the Great Lakes, and all coal received at the dock is brought by boat from lower lake ports (Rec. 31, 32).

On October 20, 1924, the deceased, Charles Strand, was in the employ of this company (Rec. 28, 29). He was carried on the payroll of the company as a car loader, which occupation was carried out on the dock, but the general nature of his work required him occasionally to assist in the unloading of boats (Rec. 38). He was steadily employed by the company (Rec. 39). The company did not employ any class of employees who did nothing except stevedore work (Rec. 40). The regular employees on the dock were called upon at such times as boats were being unloaded, to go into the hold of boats and clean up coal therein and shovel it out where it could be taken out with a clam shell operated by machinery (Rec. 41). He was so engaged on October 20, 1924, when the clam shell struck him and squeezed him against the side of the boat, causing his instant death (Rec. 37, 39). The vessel on which he was working at the time of his death was the Steamer Matthew Andrews, which brought a cargo of coal from Toledo, Ohio, to Superior by way of the Great Lakes (Rec. 37, 42). It was lying in navigable waters and was secured to the dock by lines in the customary manner while it was being unloaded (Rec. 31). The

company had an average of about five boats a month during the navigation season and it took about 15½ hours to unload a boat of the average size, so that there was approximately 75 hours work each month in unloading boats at the dock (Rec. 41), and the balance of the time the employees were engaged in work on or about the dock. During the period from about December 1st to April 15th, navigation is closed, and no boats are unloaded (Rec. 41). In the open season of 1924, that is, from approximately April 1st to October 20, 1924, the date on which Strand met his death, he worked 117½ hours on 31 boats, the balance of his time having been spent on the dock (Rec. 34).

The respondent, Emma Strand, is the widow of the deceased and, if the Workmen's Compensation Law of Wisconsin is applicable to the facts of the case, she is entitled to compensation in the sum of $5600.00, plus $200.00 burial expenses, or a total of $5800.00, which amount was awarded her by an award of the Industrial Commission of Wisconsin (Rec. 18). Subsequent to the entry of the award as stated, the Northern Coal & Dock Company, herinafter referred to as employer, and its insurance carrier, brought an action pursuant to the laws of the State of Wisconsin, to review this award. The action resulted in judgment affirming the award. Thereupon, the said judgment was appealed from to the Supreme Court of the State of Wisconsin, on the ground that the Industrial Commission of Wisconsin had no jurisdiction to enter the award, which appeal resulted in judgment affirming the award.

## ERRORS

The only error claimed, is that the Supreme Court of Wisconsin erred in not reversing the judgment of the Circuit Court of Dane County affirming the award.

## ARGUMENT

It may be conceded at the outset as stated in petitioners' brief, that this court has established that states have no power to change, modify or affect the general maritime law. A review

of all of the cases dealing with the subject set forth in petitioners brief will indicate that each case stands on its own bottom, and the decision therein rests upon the specific facts involved. This being the fact, it is the contention of the respondent, Emma Strand, that the decision of the Wisconsin Supreme Court rendered herein is right, and ought to be upheld.

The majority opinion of the Supreme Court of Wisconsin, (Rec. P. 55) is put squarely upon the ground that there was no question of maritime tort involved, as the matter was understood at common law, for the reason that there was no liability in admiralty for death, and, since Strand was instantly killed, his widow must necessarily avail herself of the remedy provided by the laws of the State of Wisconsin, which remedy is that provided by Sec. 331.03 of the Wisconsin Statutes, which follows:

> "331.03 RECOVERY FOR DEATH BY WRONGFUL ACT
>
> "Whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided that such action shall be brought for a death caused in this state."

but that since this section was abrogated as between employer and employee by the terms of Sec. 102.03, Chap. 102, Wisconsin Statutes, 1925, which follows:

> "102.02 (3) * * * And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of Section 102.03 to 102.34 inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death * * * "

the Industrial Commission was the sole tribunal in which proceedings to enforce liability might be brought.

*The Harrisburg, 119 U. S. 199*
*Bloom v. Furness-Withy & Co. 293 Fed. Rep. 98.*
*Dobrin v. Mallory S. S. Co. 298 Fed. Rep. 349*
*Western Fuel Co. v. Garcia, 257 U. S. 233,*

The majority opinion of the Supreme Court of Wisconsin refers to the Act of Congress of March 30, 1920 (41 Stats. L. c 111, page 537; U. S. Comp. Stat. Sec. 1251½-f) which provides as follows:

> "The provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this act, nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any state, or to any navigable waters in the Panama Canal Zone."

construing that section as not affording any remedy in admiralty where the location of the tort was on the Great Lakes.

The majority opinion did not cite or discuss the Jones Act of June 5, 1920 (Act of Congress June 5, 1920, 41 Stats. L. 1007), extending the provisions of the Federal Employers Liability Act to seamen.

It is contended by petitioners, that the Jones Act applies to this case under the decision of *International Stevedoring Company v. Haverty, 47 Sup. Ct. Rept. 19,* in which this court held that the word "seaman" was a broad and inclusive term and included "stevedores" for the reason that the work performed by stevedores was formerly performed by the ship's crew.

The opinion of this court in the Haverty case was not handed down until October 18, 1926, so the respondent, Emma Strand did not have the benefit of the interpretation just referred to. However, there was a specified finding in the Haverty case that the employee therein involved who was injured while engaged in stowing freight in the hold of a boat was a longshoreman or stevedore. He was an employee of a stevedore company, whose

business was to unload boats, and thus perform a maritime service formerly rendered by the ship's crew.

Under the facts in the instant case, to stretch the word "seamen" as used in the Jones Act to cover the employment of the deceased in the instant case, would, we contend, stretch the law to the breaking point, as the record shows that deceased was not in any sense a stevedore or longshoreman, but was an employee of a company whose business was mining, marketing and selling of coal at wholesale. The record shows that the unloading of boats, and the casual work of the deceased on the same, was but incidental to the main business of the company. The company owned no boats, unloaded no boats for profit, and there is not the slightest evidence in the record to show that the deceased was engaged in the fulfillment of a maritime contract at the time of his death. We presume that if Mr. Strand were alive, he would be the most suprised man in the world to learn that at the time he was injured, he was a seaman.

There is no question but what the location of the tort in the instant case was maritime, but this fact alone does not give the admiralty courts exclusive jurisdiction. There are other things to take into consideration besides the locality of the tort; the nature of the employment itself is one; the question of whether or not the injured party was engaged in maritime work is another; the question of whether or not the nature of the contract of employment was such that it must be inferred that the parties to the contract of employment contracted with reference to the operation of the maritime law, and further question is often presented, as to whether or not the particular state law or statute under which relief has been granted was of such force or effect as to interfere in any way with the uniformity of the maritime law.

An employe of a building company at work upon a vessel which had been launched so as to be within the admiralty jurisdiction but who had contracted with his employer with reference to a state compensation law, was held to be entitled to compensation for injury under that law, and that that remedy

was exclusive. The location of the tort was maritime, but the contract for construction of the boat was non-maritime.

*Grant Smith-Porter Ship Company v. Rohde, 257 U. S. 469; 42 Sup. Ct. 157.*

Again in the case of *Millers' Indemnity Company v. Braud 270 U. S. 59, 46 Sup. Ct. 194*, it was held that the Workmen's Compensation Law of Texas applied to an employee engaged in removing obstructions to navigation in navigable waters within the state. In that case the deceased was employed as a diver and submerged himself from a floating barge anchored in a navigable river for the purpose of sawing off timbers which obstructed navigation, and while thus submerged, he died of suffocation. The decision went on the ground that no material prejudice was occasioned to the general rules of maritime law by applying to the facts in the case the provisions of the Workmen's Compensation Law of Texas. The court held that the remedy provided by the Texas law under the circumstances was exclusive.

We therefore respectfully submit that under the facts in the instant case, in order to work a reversal of the judgment of the Supreme Court of the State of Wisconsin herein, this court must find that at the time of his death, the deceased was a seaman, within terms of the Jones Act, (Act of Congress of June 5, 1920).

Aside from the ground asserted in the majority opinion of the Supreme Court of Wisconsin for affirming the award of the Industrial Commission in the instant case, it is the contention of the respondent that the same may also be upheld on the ground set forth by Stevens J. in his concurring opinion to be found at page 519 of 193 Wis. (Page 658 of 213 N. W.).

The ground upon which Stevens J. concurs in the affirmation of the award of the Industrial Commission in the instant case may be briefly stated as follows:

Respondent, Emma Strand, widow of deceased, makes no claim against the ship or the owner of the ship, and seeks no recovery in tort. On the contrary, she asks that the employer, Northern Coal & Dock Company, pay her the death benefit

which it contracted to pay when it employed the deceased. He holds that the deceased was not employed by the owner of the ship, or as a seaman or a stevedore, and that the single question presented, is whether the fact that deceased was temporarily at work on board a ship lying in navigable waters vests exclusive jurisdiction in admiralty to such an extent as to nullify the contract of employment and to give the employer the right to violate the obligation of that contract, which gave the widow the right to a death benefit under the Wisconsin Workmen's Cnmpensation Act. He holds the controlling fact in the case to be that the application for compensation presented to the Industrial Commission of Wisconsin is not an action sounding in tort; that on the contrary it is a proceeding to recover a death benefit fixed by contract "within a state whose positive enactment prescribed an exclusive remedy therefor, and as both parties had accepted and proceeded under the statute, . . . it cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime *v. Rhode, 257 U. S. 469, 42 Sup. Ct. 157.* ~~He further points I. Rohde, 257 U. S. 469, 42 Sup. Ct. 157.~~ He further points out, as we have previously contended, that the fact that deceased sustained an injury on board ship, does not give admiralty exclusive jurisdiction, and that the location of the maritime tort causing the injury or death is not the controlling factor, and by a process of *reductio ad absurdum* shows that, if the contention of petitioners herein be correct, a delivery boy who was injured on board ship during the short space of time essential to secure on the ship a single package of freight consigned to his employer, could have recourse for damages only in an admiralty court.

The petitioners claim that to apply the Workmen's Compensation Act of Wisconsin to the instant case, would clearly work material prejudice to the characteristic features of the general maritime law, and would interfere with the proper harmony and uniformity of that law. This statement appears to be quite gratuitous for the reason that they fail to point out in what manner the application of the local compensation act to the facts involved here will interfere with such uniformity. We submit that no claim has been asserted in the instant case that would in any way interfere with such uniformity.

Petitioners also submit that the facts in the instant case are controlled by the case of *Southern Pacific Company v. Jensen, 244 U. S. 205, 37 Sup. Ct. 524.* We submit that such is not the case for the reason, as pointed out by Judge Stevens in his concurring opinion that, "What is there said must be read in the light of the fact that the law there under consideration subjected the owners of ocean-going vessels of other states who employed seamen and stevedores to move the ship's cargo to the obligations imposed by the New York Workmen's Compensation Act." In the *Jensen* case, the deceased was killed on a steamship owned by his employer, the Southern Pacific Company. The work being done in that case by deceased was clearly the work of a stevedore engaged in the fulfillment of a maritime contract, and the injury from wihch he died, was likewise maritime. It is very clear that to apply the provisions of the Workmen's Compensation Act of New York to the facts in the *Jensen* case would destroy the desirable uniformity in respect to maritime matters which the Constitution was designed to establish.

We propose now briefly to review some of the authorities cited in petitioners' brief as supporting its contentions.

In the case of *Great Lakes Dredge & Dock v. Kierejewski, 261, U. S. 479, 43 Sup. Ct. 418,* the libelant, the widow of deceased, who was a boiler maker, was making repairs on a scow moored in navigable waters when he met his death through the negligence of the Dredge & Dock Company, a tug belonging to the said company swamping the float upon which he was standing. This is clearly a case of admiralty jurisdiction, with no conflict of the state laws involved.

The case of *Gonsalves v. Morse Dry Dock & Repair Company, 266 U. S. 171, 45 Sup. Ct. 39,* is a case involving a libel against an employer for injuries sustained in repairing a steamer supported by a floating dry dock. This case was held to be one for admiralty jurisdiction, the action not having occured on land, and there was no conflict with a state statute involved.

The case of *Knickerbocker Ice Company v. Stewart, 253 U. S. 149, 40 Sup. Ct. 438,* was one where the deceased was employed as a barge man, and was doing work of a maritime nature when he fell into the Hudson River and was drowned. His

widow made a claim under the Workmen's Compensation Law of New York and an award was granted and sustained by the highest state court, which latter court concluded that the rule set out in the *Southern Pacific Company v. Jensen, 244 U. S. 205, 37 Sup. Ct. 524, 61 L. Ed. 1086* had been extinguished by an act of Congress amending the judicial code relating to the jurisdiction of District Courts so as to save to claimants the rights and remedies under the Workmen's Compensation Law of any state. The nature of the tort there was, of course, purely maritime, both as to location, nature of work, and contract, and the court held that Congress by amending the judicial code as stated, had undertaken to permit application of Workmen's Compensation Laws of the several states to injuries *within the admiralty and maritime jurisdiction.* In view of the decision in the *Southern Pacific Company v. Jensen supra,* the court held that Congress could not transfer its legislative power to the states, and set aside the award. The state enactment in that case provided exclusive rights and liabilities and undertook to secure their observance by heavy penalties and onerous conditions and provided novel remedies incapable of enforcement by an admiralty court, to a state of facts which clearly showed a case for exclusive admiralty jurisdiction. The decision was five to four, four judges dissenting.

*State of Washington v. W. C. Dawson, 264 U. S. 219, 44 Sup. Ct. 302,* involves a case of the death of a workman who was killed while actually engaged in maritime work under a maritime contract. He was engaged in the business of a stevedore, and the company for whom he worked and its employees worked only on board ships in navigable waters.

The excerpt from the opinion of this court in the case of *T. Smith & Son Inc. v. Fannie Robinson Taylor, ..... U. S. ....., 48 Sup. Ct. Rep. 228 (Advance opinions March 1, 1928),* to be found on page 8 of petitioners' brief, is mere *obiter dicta* for the reason that the case does not involve admiralty jurisdiction, since the deceased met his death while on land, and the Louisiana Compensation Law was clearly applicable.

The cases of *Waring, et al v. Clarke, 5 How. 441, 459; 12 L. Ed. 226; R. R. Co. v. Towboat Co. 23 How. 209, 215; 16*

*L. Ed. 433; The Propeller Commerce, 1 Black 574, 579; 17 L. Ed. 107; ..The Plymouth, 3 Wall. 20, 33; 18 L. Ed. 125; Leathers v. Blessing 105 U. S. 626, 630; 26 L. Ed. 1192; Martin v. West, 222 U. S. 191, 197; 32 Sup. Ct. 42,* are incorrectly cited in petitioners' brief as authorities for the proposition that admiralty jurisdiction in tort matters depends upon locality. We say this advisedly, having in mind the decision rendered by this court in the case of *Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 46 Sup. Ct. 194* heretofore discussed in this brief. No one denies that the locality of the tort is an *element* in admiralty jurisdiction.

In *Robins Dry Dock & Repair Company. v. Dahl, 266 U. S. 449, 45 Sup. Ct. 157,* the decision was simply to the effect that a person who is doing repair work on a vessel in navigable waters is amenable to the admiralty jurisdiction to the extent that it was error for the trial court to permit the jury to consider the local law of the State of New York in deciding whether or not the employer was negligent.

In the case of *Western Fuel Co. v. Garcia, 257 U. S. 233, 57 Sup. Ct. 89,* also cited in petitioners' brief as authority for its contention, we respectfully sumit that the exact question involved in the instant case was not decided in the *Garcia* case as alleged in petitioner's brief. The decision in the *Garcia* case went on the theory that deceased was a stevedore and also worked in the hold of a vessel at the timeof his death, obviously in the fulfillment of a maritime contract. The question of the conflict between the California Workmen's Compensation Act and admiralty jurisdiction was not involved. The court simply holds that under the circumstances stated, where such tort occurs within a state, whose statutes give a right of action for death by wrongful act, admiralty courts will entertain a libel in personam for the damages sustained by those to whom the right is given, since the subject is maritime and local in character, and a modification to the rule applied when following the common law of admiralty which does not materially prejudice the characteristic features of that law, nor interfere with its uniformity.

In view of the above and foregoing, we therefore respectfully submit that the decision of the Supreme Court of the state

of Wisconsin, affirming the judgment of the Circuit Court of Dane County, Wisconsin, which latter judgment upheld the award of the Industrial Commission, granting respondent, Emma Strand, compensation in the amount stated herein, is right, and should be affirmed.

Respectfully submitted,

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*Attorneys for Respondent, Emma Strand*

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 695 41

NORTHERN COAL & DOCK COMPANY, a Corporation, and GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*v.*

EMMA STRAND and INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

# Brief for Respondent, Industrial Commission of Wisconsin

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IN THE

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OCTOBER TERM, 1927

No. 685

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NORTHERN COAL & DOCK COMPANY, a Corporation, and GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., OF PERTH, SCOTLAND,

*Petitioners,*

*v.*

EMMA STRAND and INDUSTRIAL COMMISSION OF WISCONSIN,

*Respondents.*

---

CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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# Brief for Respondent, Industrial Commission of Wisconsin

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This case comes to this court on a writ of certiorari to the supreme court of the State of Wisconsin. The judgment and the opinion of the supreme court of Wisconsin (*Northern Coal & Dock Company v. Industrial Commission,* 193 Wis. 515, 213 N. W. 658, 215 N. W. 448) are printed on pages 56-62 of the transcript of record.

## STATEMENT OF FACTS

The Northern Coal & Dock Company is in the business of mining, hauling and selling coal at retail. It has no boats (Rec. 32). At Superior the coal is unloaded from boats, stored, and reloaded into cars for shipment to coal dealers (Rec. 32). Eighteen men are employed (Rec. 37), variously designated as scraper men, hoisters, bridge operators, gripmen, laborers, firemen, engineers, electricians, blacksmiths, carpenters and carloaders (Rec. 45).

Boats are unloaded during seven months a year (Rec. 40) at an average of five boats a month (Rec. 41). In the 1924 season approximately thirty-one boats were unloaded (Rec. 35, 41). It takes about 15½ hours to unload a boat (Rec. 41). All of the employes help unload regardless of their usual occupations (Rec. 45), and about one-half of them are required to get into the boat (Rec. 45). If the employes did nothing but unload boats, they would be employed an average of five days a month for seven months in a year. There are no employes who do nothing but unload (Rec. 40).

Charles Strand was designated as a carloader man (Rec. 38, 44), but he was sort of a general utility man (Rec. 34), working as an oiler when a boat was in (Rec. 33) and at other times working as elevator man and scraper man. On the day preceding the accident he was employed as a carloader. On October 22, 1924, the general foreman ordered him to go into the boat to help clean up the coal left outside of the reach of the clam shell (Rec. 37). While working in the hold, he was squeezed in between the clam shell and the side of the boat (Rec. 37) and killed instantaneously (Rec. 39).

Strand worked on the average of nine hours a day (Rec. 35). In 1924 he worked 117½ hours on 31 boats (Rec. 34). Although performing other duties in connection

with these 31 boats, he did not work even five days in the hold (Rec. 38). His time when not unloading was divided between his work as carloader, elevator man and scraper man (Rec. 34).

Emma Strand, the widow of Charles Strand, filed an application with the industrial commission of Wisconsin asking for death benefits from the employer and its insurance carrier (Rec. 13-14). After a hearing, findings were made that Charles Strand and his employer were subject to the provisions of the Wisconsin compensation act and an award was made to Emma Strand in the sum of $4,653.56 and $200.00 burial expenses (Rec. 18-20). An action to review the award was commenced by the employer and insurance carrier (Rec. 1-7); and the award was sustained by the circuit court of Dane county (R. 48-51). The employer and insurance carrier appealed from the judgment to the supreme court of the State of Wisconsin, which court affirmed the judgment (Rec. 54-55) and later denied a motion for rehearing (Rec. 58-59).

## SUMMARY OF ARGUMENT

Charles Strand, the deceased workman, was neither a seaman nor a stevedore; and his employer, the Northern Coal & Dock Company, was a coal dealer not engaged in navigation. Therefore, the application of the state compensation act in the case here presented will not work material prejudice to the characteristic features of the general maritime law.

*Millers' Indemnity Underwriters v. Braud*, 270 U. S. 59, 46 Sup. Ct. 194, 70 L. Ed. 470;
*Grant Smith-Porter Ship Company v. Rohde*, 257 U. S. 469, 42 Sup. Ct. 157, 66 L. Ed. 321.
*State Ind. Board of the State of N. Y. v. Terry & Tench Co.*, 273 U. S. 639, 71 L. Ed. 817.

In no event, however, were the parties subject to the maritime law because (1), they had contracted with reference to the state compensation law; and (2), the work was not being performed under a maritime contract.

*Grant Smith-Porter Ship Company v. Rohde,* 257 U. S. 469, 476, 42 Sup. Ct. 157, 66 L. Ed. 321;
*Anderson v. Miller Scrap Iron Co.,* 169 Wis. 106, 113-114, 170 N. W. 275, 171 N. W. 935;
*Southern Pacific Co. v. Jensen,* 244 U. S. 205, 61 L. Ed. 1086, 14 N. C. C. A. 597, 37 Sup. Ct. Rep. 524;
*State Ind. Com. of N. Y. v. Nordenholt Corp. et al,* 259 U. S. 263, 66 L. Ed. 933, 42 Sup. Ct. Rep. 473, 21 N. C. C. A. 862;
*Chelentis v. Luckenbach Steamship Company,* 247 U. S. 372, 382, 62 L. Ed. 1171, 38 Sup. Ct. Rep. 501;
*Smith & Son v. Taylor,* — U. S. —, 72 L. Ed. 273, (Advance Opinions);
*Rosengrant v. Havard,* 273 U. S. 664, 71 L. Ed. 829.

Where the state statute makes the workmen's compensation act the exclusive remedy where both the employer and employe are under the act, the industrial commission has jurisdiction to entertain an application for compensation for death occurring on navigable waters.

*The Harrisburg,* 119 U. S. 199, 30 L. Ed. 358, 7 Sup. Ct. Rep. 140;
*Panama Railroad Company v. Rock,* 266 U. S. 209, 69 L. Ed. 250, 45 Sup. Ct. Rep. 58;
*American Steamboat Co. v. Chase,* 16 Wall. 522, 21 L. Ed. 369;
*Bloom v. Furness-Withy & Co.,* 293 Fed. 98.

## ARGUMENT

### I. *The Application of the State Compensation Act Will Work no Material Prejudice to the Characteristic Features of the General Maritime Law.*

In *Millers' Indemnity Underwriters v. Braud*, 270 U. S. 59, 64, 46 Sup. Ct. 194, 70 L. Ed. 470, a diver was killed while submerged from a floating barge anchored in navigable waters for the purpose of removing timbers which had become an obstruction to navigation. In upholding an award of compensation, this court said:

> "In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; but the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

In *Grant Smith-Porter Ship Company v. Rohde*, 257 U. S. 469, 476, 42 Sup. Ct. 157, 66 L. Ed. 321, in which a state compensation law was applied to an injury received by a workman on a partially completed vessel lying in dock in navigable waters, this court said:

> "* * * Under such circumstances regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations. *Southern Pacific Co. v. Jensen*, 244 U. S. 205; *Western Fuel Co. v. Garcia, ante*, 233."

See also: *State Ind. Board of the State of N. Y. v. Terry & Tench Co.*, 273 U. S. 639, 71 L. Ed. 817, following above cases.

These cases, it is respectfully submitted, control the present controversy. The boat on which Strand was killed did not belong to his employer. The Northern Coal & Dock Company did not own or operate any steamboats, nor did it engage in the business of stevedoring (Rec. 32). It was simply a coal dealer (Rec. 31) receiving shipments by water instead of rail (Rec. 32). Strand was not a seaman or a stevedore; he was simply an elevator worker (Rec. 34, 38, 44) who spent approximately two per cent of his working-time on navigable waters (Rec. 38). We have the situation, then, of a non-maritime worker killed while working for a non-maritime employer. The compensation is payable, not by a steamboat or stevedoring company, but by a coal dealer. It is difficult to see how permitting the state compensation law to apply can work any material prejudice to any characteristic features of the general maritime law or interfere with its proper harmony in its international or interstate relations.

II. *The Parties Contracted with Reference to the Wisconsin Compensation Act.*

It is unnecessary to rely on the rule that the local compensation law may be applied where it will work no material prejudice to the characteristic features of the general maritime law, for (1) the parties contracted in reference to the Wisconsin compensation act and (2) they were not working under a maritime contract—each a condition that precludes the application of the admiralty law.

In *Grant Smith-Porter Ship Company v. Rohde*, 257 U. S. 469, 476, 42 Sup. Ct. 157, 66 L. Ed. 321, this court said:

"* * * The injury was suffered within a State whose positive enactment prescribed an exclusive remedy therefor. And as both parties had accepted and proceeded under the statute by making payments to the Industrial Accident Fund it cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime law. *Union Fish Co. v. Erickson,* 248 U. S. 308."

In the present case, in one year Strand worked 117½ hours unloading boats (Rec. 34). Strand worked on the average nine hours a day (Rec. 35); therefore he worked 2700 hours a year. In 1924 he spent 117½ hours unloading boats (Rec. 34)—less than 5 per cent of his time. In the same year he did not spend even five days working in the hold of a boat (Rec. 38)—less than 2 per cent of his time. The rest of his time was spent in work on the docks (Rec. 33, 34).

Isn't it a fair inference that in the contract of employment between Strand and his employer, the ninety-five per cent of his work was considered and not the five per cent? The likelihood is that neither employer nor employe gave a thought to the few hours that would be spent on navigable waters. It was an agreement for work on land, and therefore, the state compensation law enters into and becomes a part of that contract.

*Anderson v. Miller Scrap Iron Co.,* 169 Wis. 106, 113-114, 170 N. W. 275, 171 N. W. 935.

III. *Strand was not Working under Maritime Contract.*

In *Southern Pacific Co. v. Jensen,* 244 U. S. 205, 217, 61 L. Ed. 1086, 14 N. C. C. A. 597, 37 Sup. Ct. Rep. 524, this court said:

"The work of a stevedore in which the deceased was engaging is maritime in its nature; *his employment was a maritime contract;* the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek,* 234 U. S. 52, 59, 60." (Italics ours.)

In *State Ind. Com. of N. Y. v. Nordenholt Corp. et al,* 259 U. S. 263, 273, 66 L. Ed. 933, 42 Sup. Ct. Rep. 473, 21 N. C. C. A. 862, 866, this court said:

"* * * The liability of the employer for damages on account of injuries received on shipboard by an employee *under a maritime contract* is matter within the admiralty jurisdiction; but not so when the accident occurs on land." (Italics ours.)

In *Grant Smith-Porter Ship Company v. Rohde,* 257 U. S. 469, 475, 66 L. Ed. 321, 42 Sup. Ct. Rep. 157, 25 A. L. R. 1008, this court said:

"*The contract for constructing the Ahala was non-maritime,* and although the incompleted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment nor his activities at the time, had any direct relation to navigation or commerce. *Thames Towboat Co. v. The Schooner 'Francis McDonald,'* 254 U. S. 242." (Italics ours.)

In *Chelentis v. Luckenbach Steamship Company,* 247 U. S. 372, 382, 62 L. Ed. 1171, 38 Sup. Ct. Rep. 501, this court said:

"The work about which petitioner was engaged is maritime in its nature; *his employment was a maritime contract;* the injuries received were likewise mari-

time and the parties' rights and liabilities were matters clearly within the admiralty jurisdiction." (Italics ours.)

In *Smith & Son v. Taylor*, — U. S. —, 72 L. Ed. 273, (Advance Opinions) this court said:

"Deceased was engaged in maritime work *under a maritime contract.* If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violates sec. 2 of art. 3. But, if the cause of action arose upon the land, the state law is applicable." (Italics ours.)

See also: *Rosengrant v. Havard*, 273 U. S. 664, 71 L. Ed. 829.

From these expressions it seems clear that one of the determining factors in precluding the application of the local compensation act is the maritime nature of the contract under which the work is being performed. In the present case the employment was not maritime in nature. Less than five per cent of Strand's time was spent in unloading boats (Rec. 34) and less than two per cent of his time was spent in the hold of a boat (Rec. 38). Two per cent seems entirely insufficient to transmute a non-maritime into a maritime contract. It is respectfully submitted that the contract of employment remained non-maritime, and that therefore, giving effect to frequent expressions of this court, the local compensation law must apply to a death occurring in the performance of the contract.

IV. *Where State Statute Makes Workmen's Compensation Act Exclusive Remedy where both Employer and Employe are under the Act, the Industrial Commission has Jurisdiction to Entertain an Application for Compensation for Death Occurring on Navigable Waters.*

It is undisputed that Strand was instantly killed. In the absence of any act of congress or state statute, no suit to recover damages could have been sustained. *The Harrisburg,* 119 U. S. 199, 30 L. Ed. 358, 7 Sup. Ct. Rep. 140; *Panama Railroad Company v. Rock,* 266 U. S. 209, 211, 69 L. Ed. 250, 45 Sup. Ct. Rep. 58. When state statutes give a remedy for death by wrongful act, and the act is done in navigable waters, liability thus created may be enforced in a state court, as well as in the federal court. *American Steamboat Co. v. Chase,* 16 Wall. 522, 21 L. Ed. 369.

The Jones Act (Act of June 5, 1920), c. 250, sec. 33, 41 Stats. 988, 1007 (Comp. St. sec. 8337a), Title 46, ch. 18, sec. 688 U. S. C. A., provides in part:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

In *International Stevedoring Co. v. Haverty*, 272 U. S. 50, 71 L. Ed. 157, 47 Sup. Ct. Rep. 19, a stevedore was held to be a seaman within the scope of this statute. However, as has been indicated elsewhere, Strand was not a seaman or a stevedore. Recovery for his death must still depend upon the state death statute or a substitute therefor.

Sec. 331.03, Wisconsin Stats., provides:

> "Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state."

Sec. 102.03 of the Wisconsin compensation act provides in part:

> "And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of sections 102.03 to 102.34, inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases, the liability of the employer shall be the same as if this and the succeeding sections of sections 102.03 to 102.34, inclusive, had not been passed, but shall be subject to the provisions of sections 102.01 and 102.02."

Except for the compensation act, recovery could be had under the Wisconsin death statute. However, the compensation act substituted for the death statute, in cases

of master and servant under the act, an exclusive remedy—and this remedy can be enforced only before the industrial commission of Wisconsin. Allowing the application of the compensation act in death cases is simply permitting the utilization of a specialized section of the death statute. To deny the jurisdiction of the industrial commission to enter an award is to make a workmen's compensation act destroy the very remedy it seeks to give.

Directly in point is *Bloom v. Furness-Withy & Co.*, 293 Fed. 98, 102, which involved a claim for damages because of the death of one Bloom from injuries suffered on the deck of a vessel. The court said:

> "Under the law of California the plaintiff here, under the facts alleged, could not go into a court of law and assert a claim for damages under the provisions of section 377 of the California Code of Civil Procedure. That section does not apply to her case at all. Any claim that she has must be dealt with by a board of commissioners, and she must receive allowances of money in the manner and at the times and for the period which the law and the commissioners acting under it may determine that she is entitled to. Such rights as are given under the California Employers' Liability Act cannot suitably be enforced in the District Court of the United States under admiralty proceedings. From this it must necessarily be concluded that the plaintiff's demurrer to the separate and affirmative defense should be overruled, and an order will be entered accordingly."

## CONCLUSION

It is urged that Strand and his employer were not subject to the maritime law, because they were not engaged under a maritime contract; and that even if they had been engaged in a maritime contract, they had contracted with

reference to the state compensation law, and that law should therefore be applied. It is also urged that the only remedy available was the local compensation act, and that this remedy should therefore be allowed. And finally, it is urged that the application of the state compensation act to a case involving a coal dealer who is not engaged in navigation and an employe who spends two per cent of his working time on navigable water will work no material prejudice to the characteristic features of the general maritime law, and that therefore, under the rules pronounced in *Millers' Indemnity Underwriters v. Braud*, 270 U. S. 59, 46 Sup. Ct. 194, 70 L. Ed. 470 and *Grant Smith-Porter Ship Company v. Rohde*, 257 U. S. 469, 42 Sup. Ct. 157, 66 L. Ed. 321, the local compensation law should be applied.

It is respectfully submitted, therefore, that the judgment should be affirmed.

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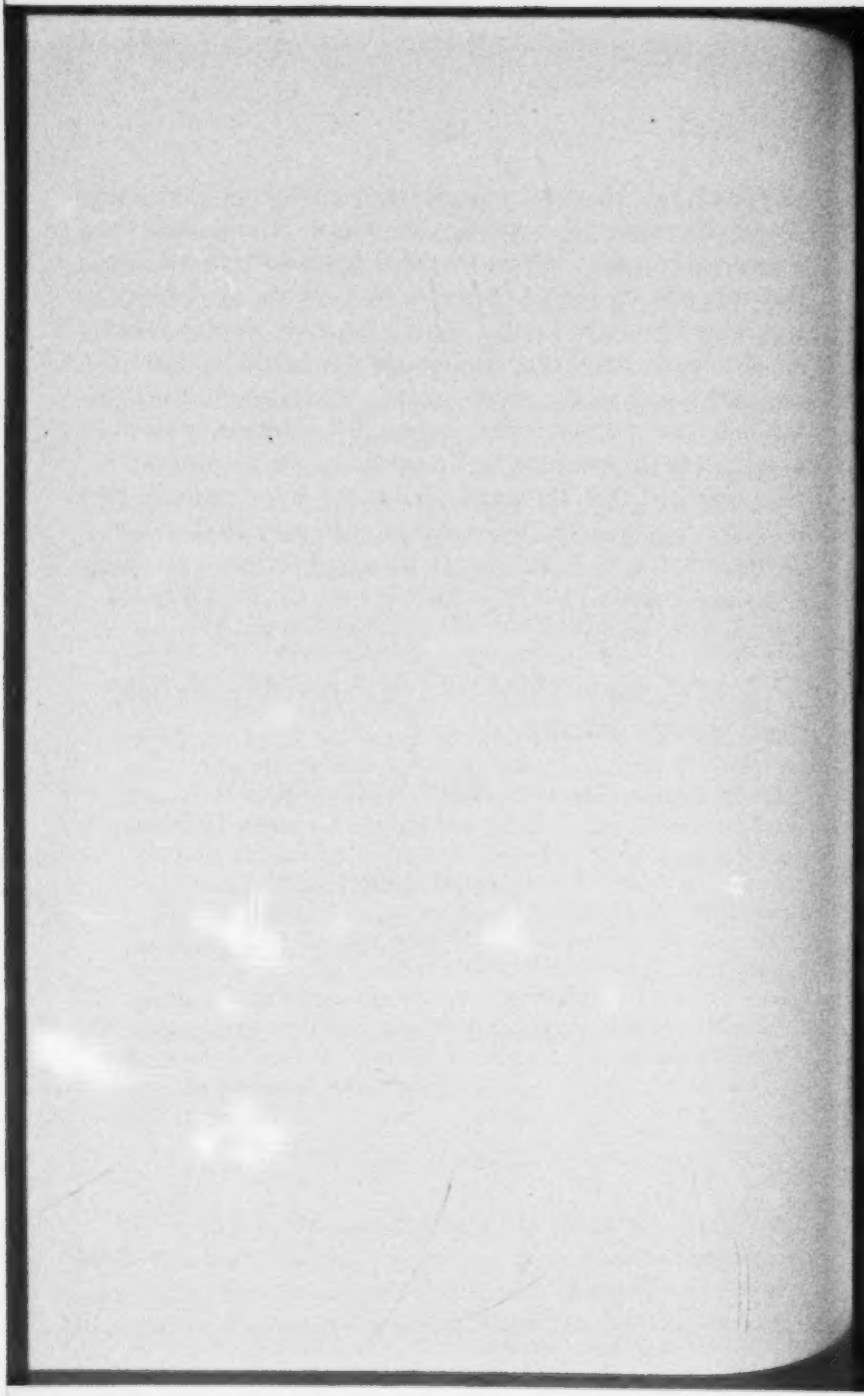

# SUPREME COURT OF THE UNITED STATES.

No. 41.—October Term, 1928.

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Northern Coal & Dock Company and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Petitioners,
*vs.*
Emma Strand and Industrial Commission of Wisconsin.

On Writ of Certiorari to the Supreme Court of the State of Wisconsin.

[December 10, 1928.]

Mr. Justice McReynolds delivered the opinion of the Court.

Petitioner, the Northern Coal & Dock Company, an Ohio corporation whose business is mining, hauling and selling coal, maintained a dock on Superior Bay, Wisconsin, where it received and unloaded coal brought by vessels from other lake ports. It employed regularly some eighteen men who worked upon the dock or went upon vessels made fast thereto and unloaded them, as directed. Charles Strand was one of those so employed. October 10, 1924, while on the steamer Matthew Andrews assisting, as his duties required, in the discharge of her cargo, he was struck by the clamshell and instantly killed.

Respondent Emma Strand, the widow, asked the Industrial Commission of Wisconsin for an award of death benefits against the petitioners—employer and insurance carrier. It found that both Strand and his employer were subject to the State Compensation Act and awarded benefits. To review this ruling petitioners brought an action in the Dane County circuit court. That court sustained the award and the State Supreme Court approved its action.

Strand's employment contemplated that he should labor both upon the land and the water. When killed he was doing longshore or stevedore work on a vessel lying in navigable waters, according to his undertaking. His employment, so far as it pertained to such

work, was maritime; the tort was maritime; and the rights of the parties must be ascertained upon a consideration of the maritime law. *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 217; *Washington* v. *Dawson & Co.*, 264 U. S. 219. Originally, that law afforded no remedy for damages arising from death; but we have held that it might be supplemented by state death statutes which prescribe remedies capable of enforcement in court. *Western Fuel Co.* v. *Garcia*, 257 U. S. 233, 242. We have also held that state statutes providing compensation for employees through commissions might be treated as amending or modifying the maritime law in cases where they concern purely local matters and occasion no interference with the uniformity of such law in its international and interstate relations. *Grant Smith-Porter Ship. Co.* v. *Rohde*, 257 U. S. 469; *Millers' Underwriters* v. *Braud*, 270 U. S. 59, 64; *Smith & Sons* v. *Taylor*, 276 U. S. 179.

The unloading of a ship is not matter of purely local concern. It has direct relation to commerce and navigation, and uniform rules in respect thereto are essential. The fact that Strand worked for the major portion of the time upon land is unimportant. He was upon the water in pursuit of his maritime duties when the accident occurred.

Chap. 331, Wisconsin Stats. 1923 [Sec. 331.03, 1925 Stats.] provides for recovery of damages arising from death caused by wrongful act, neglect, or default. The same Statutes (Sec. 102.01, 102.02, 102.03, 102.04, and 102.05, *et seq.*) deprive the employer in personal injury cases of any defense based upon assumption of risk, negligence of fellow servants, or contributory negligence (not wilful), unless he has elected to pay compensation in the manner specified, and direct that no contract, rule or regulation shall relieve him from this restriction. Also that where both employer and employee are subject to the provisions of the act the liability for compensation therein provided shall be in lieu of all other. One who employs three or more workers is declared to have elected to be subject to the act unless he has indicated the contrary. And, generally, where he has not given notice to the contrary, an employee is subject to the act whenever the employer is.

There is nothing in the record to indicate that when contracting with its stevedores the Dock Company actually agreed to subject itself to the liabilities imposed by the State Compensation Act.

And it is enough here to say that the State had no power to impose upon an employer liabilities of that kind in respect of men engaged to perform the work of stevedores on ship board.

The Act of March 30, 1920, 41 Stat. 537, which provides that the personal representative may sue whenever death may be caused by wrongful act, neglect, or default on the high seas, is mentioned in the opinion below; but we think it has no bearing upon the present controversy.

Sec. 38 of "An Act To provide for the promotion and maintenance of the American merchant marine, to repeal certain emergency legislation, etc."—Jones, or Merchant Marine, Act—approved June 5, 1920, 41 Stat. 1007, amends section 20, Act of March 4, 1915, to read as follows:

> "Sec. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

In *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, 52, [October 18, 1926] the plaintiff—a longshoreman—while at work in the hold of a vessel at dock, suffered serious injury through negligence. He sued the employer for damages in the State court and recovered. This Court affirmed the judgment and ruled that within the intendment of the Merchant Marine Act " 'seaman' is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was."

*New York Central* v. *Winfield*, 244 U. S. 147, 151, considered the effect of the Federal Employers' Liability Act, c. 149, 35 Stat. 65; c. 143, 36 Stat. 291, upon the former right of employees to

recover under the laws of the States. That act provides that every interstate carrier by railroad "shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, etc." We held "the act is comprehensive and also exclusive," and denied the right of an employee of an interstate carrier to recover under a State statute even in respect of injuries suffered without fault as to which the Federal Act provides no remedy.

*Panama R. R. Company* v. *Johnson*, 264 U. S. 375, ruled that Sec. 20, Act of March 4, 1915, as amended by the Merchant Marine Act, incorporated the Federal Employers' Liability Act into the maritime law of the United States. See *Engel* v. *Davenport*, 271 U. S. 33, 35.

We think it necessarily follows from former decisions that by the Merchant Marine Act — a measure of general application — Congress provided a method under which the widow of Strand might secure damages resulting from his death, and that no State statute can provide any other or different one. See *Patrone* v. *Howlett*, 237 N. Y. 394.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

# SUPREME COURT OF THE UNITED STATES.

No. 41.—October Term, 1928.

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| Northern Coal & Dock Company and General Accident, Fire & Life Assurance Corporation, Ltd., of Perth, Scotland, Petitioners, *vs.* Emma Strand and Industrial Commission of Wisconsin. | On Writ of Certiorari to the Supreme Court of the State of Wisconsin. |

[December 10, 1928.]

Concurring opinion of Mr. Justice Stone.

I concur in the result. As the majority have placed their conclusion, in part at least, on the grounds that a stevedore, while working on a ship in navigable waters is a "seaman" within the meaning of the Jones Act, *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, and that by the Jones Act Congress has occupied the field and excluded all state legislation having application within it, I am content to rest the case there. Similar effect has been given to the Federal Employer's Liability Act. *N. Y. Central R. R. Co.* v. *Winfield*, 244 U. S. 147.

But I should have found it difficult to say that the present case is controlled by the maritime law and so to suggest that workmen otherwise in the situation of the respondent, but who are not seamen and therefore are not given a remedy by the Jones Act, are excluded from the benefits of a compensation act like that of Wisconsin.

The state act here is contractual, as we have held in *Booth Fisheries Co.* v. *Industrial Comm.*, 271 U. S. 208, and the employer is bound to pay compensation in accordance with the schedules of the Act because the parties have agreed that they shall apply rather than the common or any other applicable law. The employer, a wholesale coal dealer, owned or controlled no ships and, except that it owned a dock at which coal was delivered to it from ships,

had no connection with maritime affairs. The employee's regular work was non-maritime and he spent but two per cent of his time unloading his employer's coal from ships. To me it would seem that the rights of parties who have thus stipulated for the benefits of a state statute in an essentially non-maritime employment are not on any theory controlled by the maritime law or within the purview of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, *Washington* v. *Dawson & Co.*, 264 U. S. 219.

Nor would it seem that resort by an employee only casually working on a ship, through such a non-maritime stipulation, to a state remedy not against the ship or its owner, but against the employer engaged in a non-maritime pursuit is anything more than a local matter or would impair the uniformity of maritime law in its international or interstate relations. *Grant Smith-Porter Ship Co.* v. *Rhode*, 257 U. S. 469; *Millers' Underwriters* v. *Braud*, 270 U. S. 59. Recovery in a state court upon an insurance policy upon the life of a seaman for death occurring on a ship on the high seas while in the performance of his duties would not, I suppose, be deemed to have that effect or be precluded by the admiralty law, even though some of the provisions of the policy were imposed by state statute.

Mr. Justice HOLMES and Mr. Justice BRANDEIS concur in this opinion.